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Wyoming Extradition

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WYOMING EXTRADITION

Extradiction is not a modern concept. Its history dates back as far as records are available, in one form or another.[1] In this country it had its beginning in the colonies as a matter of comity. Later, when the thirteen original states formed a union, it was provided for in the Articles of Confederation.[2] The Fathers of our country in drafting our Constitution realized the necessity of such a provision. Without substantially changing the language used in the Articles of Confederation, they included the extradition clause in the United States Constitution.[3] In 1793, acting upon the suggestion of Attorney General Randolph, Congress enacted legislation to provide machinery for the execution of the federal extradition clause.[4]

In 1926, the Conference of Commissioners on Uniform State Laws attempted to codify the more desirable features of the extradition statutes in existence in the various states, in the form of the "Uniform Criminal Extradition Act." The Commission made some minor amendments to the Act in 1932, and in 1936 announced a revision of the Act.

Extradition in Wyoming is based primarily upon Sections 10-2401 to 10-2427 of the Compiled Statutes of 1945, which is the original Uniform Criminal Extradition Act of 1926, plus the amendments which the Commission made in 1932. We have not adopted the revised Act promulgated in 1936. Our statutes are authority to the extent that they do not conflict with the requirements of the United States Constitution and the federal statutes on the subject, since the federal laws are paramount in this area.

Wyoming enacted its extradition statutes in their present form in 1935. The Uniform Act as we have it at present may be summarized as follows: In cases involving the extradition from Wyoming of a fugitive from the justice of another state, it is the duty of the Governor to have such person arrested and delivered up to the executive authority of the demanding state upon certain conditions being met. To initiate the proceedings, the Governor of the demanding state must present to the Governor of Wyoming a requisition for the return of the fugitive. Upon receipt of such requisi-

1. 14 Bost. U.L. Rev. 592-597 (1934).
2. Articles of Conferation, Art. IV, para. 2.
3. U.S. Const., Art. IV, Sec. 2, para. 2. "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."
4. 62 Stat. 821 (1948), 18 U.S.C.A. 3182. "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory, to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged."

tion, the Governor is required to make an investigation of the request. He may call upon the Attorney-General to assist in the investigation. If the Governor decides that the request is just, he then issues a warrant for the arrest of the accused, directed to the proper authorities qualified to make arrests. When the accused is arrested, he must be informed of the request for his surrender, and be given an opportunity to retain counsel if he so desires.

In the event that the alleged fugitive wishes to test the validity of the extradition, he may do so by a writ of habeas corpus. Petition for the writ must be filed in the county in which the arrest was made. Almost without exception, the various questions which arise in connection with extradition are settled by the courts through the medium of this habeas corpus procedure. The problems which most frequently arise will be discussed hereinafter. If the habeas corpus is denied, or if the arrest is not contested, the fugitive will be turned over to an agent of the demanding state.[5]

In the event Wyoming wants a fugitive from justice returned to this state from another state, the prosecuting attorney of the county in which the alleged felony, treason or other crime was committed initiates the action by making a written application for a requisition for the return of such person. The application states that a crime has been committed, and names the State in which it is believed the accused can be found. The application must be verified by affidavit, and be accompanied by certified copies of the indictment, information or complaint made before a magistrate and prepared in duplicate. One set of the documents must be filed with the Secretary of State of Wyoming, and in the event the Governor of Wyoming deems the claim to be just, the other set is forwarded with the Governor's requisition to the executive authority of the asylum state. At the same time the Governor appoints an agent to whom the fugitive is to be delivered.[6]

The majority of changes made by the Commissioners on Uniform State Laws in 1936 were only minor. However, this revision added three important changes: first, provisions for the extradition of persons already convicted of crimes who have escaped from custody or confinement;[7] second, provisions under which an accused can waive the extradition process;[8] and third, a provision by which one state does not waive its right to demand a fugitive from another state by not taking action as soon as it gains information as to the fugitive's whereabouts.[9]

In the interest of making Wyoming statutes more complete, it would seem that the addition of provisions for the return of convicted criminals,

5. Wyoming Compiled Statutes, §§ 10-2401 to 10-2427 (1945).
6. Ibid.
7. 9 U.L.A. 221, Uniform Criminal Extradition Act, Sec. 23, Subsec. II.
8. Id. 226, Sec. 25A
9. Id. 227, Sec. 25B.

and the waiver provisions, are desirable. In the absence of these additions to the Act suggested by the Commissioners in 1936, it would be entirely speculative as to what a Wyoming court would do if confronted by those particular problems.

The principal problems which have arisen in connection with extradition are the following: First, the constitutionality of state statutes.

It is well settled that interstate extradition is primarily a federal matter. The Federal Constitution and effectuating statutes are supreme, and any state legislation which may be contra is unconstitutional and void.[10]

An interesting application of this principle occurred in a recent decision by the Supreme Court of Idaho[11] which held that the phrase, "together with a copy of any warrant which was issued thereon," found in Section 3 of the Revised Uniform Criminal Extradition Act,[12] was unconstitutional and void. This phrase was used in the state statute as a required document to be forwarded to the Governor of the asylum state. The question arose when the petitioner for a writ of habeas corpus alleged that in the absence of a warrant, the arrest did not comply with the statute. The Idaho court concluded that since the federal statutes regarding extradition did not require such a warrant, a state could not make an additional requirement mandatory. The court in reaching its decision followed an Arizona case.[13] The identical phrase is found in the Wyoming statutes.[14]

The controlling character of the federal statute is further exemplified by the 30 day provision within which time the agent appointed by the Governor of the demanding state must appear and accept delivery of the accused. If the agent does not appear in that period the accused must be released.[15] This time limit applies to all states, whether or not they have such provisions. Wyoming does not have such a provision. The majority of states having a time limit follow the 30 day provision of the federal statute.[16]

In a New York case the petitioner questioned the right of a state to extradite on the basis of an information. The federal statute provides for an "indictment or affidavit" made before a magistrate. The court held that a literal compliance was not necessary, and that a state was not prohibited from extraditing on less exacting terms than prescribed by the federal statute.[17]

10. People ex rel. Carr v. Murray, 357 Ill. 326, 192 N.E. 198, 94 A.L.R. 1487 (1934); Ex parte Riccardi, 68 Ariz. 180, 203 P.2d 627 (1949); People ex rel. Millet v. Babb, 1 Ill.2d 191, 115 N.E.2d 241 (1953).
11. Application of Williams, 76 Idaho 173, 279 P.2d 882 (1955).
12. 9 U.L.A. 180.
13. Ex parte Riccardi, 68 Ariz. 180, 203 P.2d 627 (1949).
14. Wyoming Compiled Statutes § 10-2403 (1945).
15. Foley v. State, ...N.J....., 108 A.2d 24 (1954).
16. 62 Stat. 821 (1948), 18 U.S.C.A. 3182.
17. People ex rel. Hollander v. Britt, 195 Misc. 722, 92 N.Y.S.2d 666, Affirmed 4th Dept. 272 App. Div. 815, 93 N.Y.S.2d 704.

One of the main contentions urged by persons who resist extradition has to do with the requirement that they be fugitives from justice. The question of who is a "fugitive from justice" is reasonably well settled. The cases seem to indicate that a person is a fugitive from the justice of another state when he is charged with a crime in one state and is subsequently found in another state's jurisdiction, regardless of his reasons for leaving the state in which the crime was committed. In the case of *Pearson v. Campbell*[18] the accused contended that he was not a fugitive because he was in the military service and left the demanding state under orders. However, the New Hampshire court disregarded the excuse and held that the accused was a fugitive from justice.

The courts of the asylum state will not pass judgment upon the guilt or innocence of the accused. In the Alabama case of *Kilgore v. State*[19] as a matter of dictum the court stated: "The guilt or innocence of the accuesd in an extradition proceeding is not presented and may not be inquired into except as it may be material in identifying the person charged and that he was or was not a fugitive from justice." The fugitive status of the accused is not changed by the fact that he considers himself to be innocent.[20]

The requirement that the alleged criminal must be present in the demanding state at the time the crime was committed is fulfilled if, having been there, he commits some overt act in furtherance of a crime subsequently consummated after he has departed the state.[21] Thus physical presence at the time of the crime is not necessary in all cases to comply with the extradition statutes. This requirement of presence in the demanding state at the time the crime was committed is found in the Revised Act and Section 10-2405 of the Wyoming Compiled Statutes of 1945.

A real exception to the rule that one sought to be extradited must have been in the demanding state at the time of the commission of the crime and must have fled therefrom, sometimes occurs in connection with the crime of non-support. In the case of *Harrison v. State*,[22] the petitioner contended he was at all times a resident of the asylum state, and that he was not in the demanding state at the time of the commission of the crime and did not subsequently leave that state. The court reasoned that the Uniform Enforcement of Support Act specifically provided for non-support

18. Pearson v. Campbell, 97 N.H. 444, 91 A.2d 453 (1952); see also Application of Gorgen, 160 Neb. 457, 70 N.W.2d 514 (1955); Appleyard v. Massachusetts, 203 U.S. 222, 27 S.Ct. 122, 51 L.Ed. 161, 7 Ann.Cas. 1073 (1906).
19. Kilgore v. State, 126 Ala. 465, 75 So.2d 126, 127 (1954).
20. Tobin v. Casaus, 128 Cal.App.2d 588, 275 P.2d 792 (1954); In re Thurber, 37 Cal. App. 571, 174 Pac. 112 (1918).
21. Chapman v. Hayward, 160 Neb. 664, 71 N.W.2d 201 (1955). Facts of this case are as follows: Chapman obtained an order releasing him from Utah State Prison. He left Utah before a final order of his release was filed. The crime charged was the securing of an illegal release. His overt act was the putting in force the agency to secure what resulted in an illegal release.
Application of Campbell, 147 Neb. 820, 25 N.W.2d 419 (1946).
22. Harrison v. State, ...Ala....., 77 So.2d 384 (1954).

as an extradictable crime. Thus an obligor could be extradited regardless of the fact that he was not in the demanding state at the time the crime was committed.

Under the Support Act the obligor may be relieved of extradition by submitting to the jurisdiction of the responding state and making the necessary support payments. However, a California court would not permit the obligor to submit voluntarily to its jurisdiction.[23] The opinion reasoned that the option of extradition or of allowing the obligor to submit to the jurisdiction of the asylum state was vested in the obligee or the demanding state. The majority felt that it was difficult for a responding state to determine adequately the needs of the obligee. However, it depends on the statute of the demanding state as to whether an obligor can institute proceedings. The Ohio statute involved in this case gave two courses of action which could be taken, first, that of extradition and second, that the obligor could submit to the jurisdiction of the responding state. The dissent in the same case took a somewhat more equitable view. The minority felt that the obligor, as long he was making payments, should be relieved of extradition. They thought the obligor should be left where he was making his money so the support money could be paid. Further the dissenters said the action of the majority would lend itself more to the satisfaction of vengeance than to the purpose of the Uniform Act.

This problem has significance for Wyoming in view of Wyoming's adoption of the Uniform Enforcement of Support Act in 1953.[24]

Another major attack of the petitioner in a habeas corpus proceeding involves contesting the validity of the extradition papers.

The governor's rendition warrant establishes a prima facie case as to the necessary jurisdictional facts and raises a presumption that the person named therein is a fugitive from justice. This presumption, however, is rebuttable by the accused. It has been said that the evidence to overcome this presumption must be overwhelmingly in favor of the accused, and that a mere conflict in the evidence is not sufficient.[25]

The alleged fugitive has a right to inspect the requisition and accompanying papers. Such inspection must be made at a reasonable time and before the habeas corpus trial. Failure of the authorities to allow the inspection will rebut the prima facie case established against the petitioner by the governor's warrant.[26]

The affidavits required by the statutes in support of an information or indictment are for the benefit of the governors of the demanding and

23. Ex parte Floyd, 43 Cal.2d 379, 273 P.2d 820 (1954).
24. Wyoming Compiled Statutes §§ 3-8101 to 3-8129 (1945).
25. Mason v. Warden, Baltimore City Jail, ...Md....., 99 A.2d 739 (1955); Munsey v. Clough, 196 U.S. 364, 25 S.Ct. 282, 49 L.Ed. 515 (1905).
26. Johnson v. State, 261 Ala. 1, 72 So.2d 863 (1954); Denson v. State, 257 Ala. 184, 57 So.2d 830 (1951).

asylum states. They indicate that the information is not unfounded. They should be dated within a reasonable time of the information, although otherwise their date is not significant. A New York court held that affidavits dated six months after the information were sufficient to show it was based on actual knowledge.[27] An affidavit from the head of the prison department of the demanding state, along with other properly authenticated papers, will definitely establish the status of an accused as being a fugitive from justice, thus showing that the accused had been convicted of a crime and had escaped from confinement.[28]

In an Oklahoma case the court pointed out that any question of motive or good faith of the prosecution should be raised at a hearing before the governor prior to the issuance of the rendition warrant.[29] However, as a general rue the motive underlying the institution of the proceeding cannot be inquired into by the courts of the asylum state, since such an inquiry would be in the nature of an attempt by one state to construe the criminal laws of a sister state. It is within the sole discretion of the demanding state as to what constitutes a substantial charge of crime in that state.[30] It is only necessary that it should appear to the governor of the responding state that a crime is substantially charged in the papers.[31]

The indictment is sufficient if it substantially charges that a crime has been committed. The prosecution in a criminal trial is not bound to show the exact time the crime was committed. Thus the indictment need only show that the accused was in the demanding state in the neighborhood of the time alleged.[32]

After a fugitive has been extradited it is possible to try him on any criminal charge which the demanding state may have against him. Even though the crime for which he is put on trial differs from the one under which he was extradited, it is not necessary to allow him to leave the state and start the proceeding over again before prosecution.[33]

A different situation results when the additional or unrelated charge is a civil proceeding. Under the Wyoming statute the fugitive must be released and allowed to return to the state from which he was extradited before service of process can be made upon him.[34]

27. People ex rel. Moore v. Skinner, 284 App.Div. 770, 135 N.Y.S.2d 107 (1954).
28. Smith v. Nye, 176 Kan. 679, 272 P.2d 1079 (1954).
29. Ex parte Beam, 96 Okla.Cr. 227, 252, P.2d 179 (1952).
30. People ex rel. Carr v. Murry, 357 Ill. 326, 192 N.E. 198, 94 A.L.R. 1487 (1934); Fortier v. Frink, 92 N.H. 50, 24 A.2d 605 (1942); Justice v. Lockett, 175 Kan. 25, 259 P.2d 152 (1953); Ex parte Cohen, ____N.J.____, 92 A.2d 837 (1952).
31. People v. Jeremiah, 364 Ill. 274, 4 N.E.2d 373 (1936).
32. Ex parte Crowley, 268 F. 1016 (D.C.D. Mass. 1920).
33. People v. Martin, 188 Cal. 281, 205 Pac. 121, 21 A.L.R. 1399 (1922).
34. Wyoming Compiled Statutes § 10-2425 (1945). "A person brought into this State on extradition based on a criminal charge, shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is returned, until he has been convicted in the criminal proceedings, or if acquitted, until he has had ample opportunity to return to the State from which he was extradited."

There have been only a few cases decided by the Supreme Court of Wyoming involving extradition, but all were decided prior to the enactment of the Uniform Act and have significance in determining who is a fugitive from justice.[35]

An analysis of the cases decided elsewhere does not reveal any particular trend. No movement away from the older cases could be expected, since the Uniform Act is for the most part merely a codification of the already existing law.

Wyoming has a compact with Kansas, New Mexico and Colorado for the arrest of fugitives which makes extradition proceedings unnecessary.[36] Law enforcement officers from those states are permitted by the compact to come into Wyoming, make arrests of fugitives, and remove them from Wyoming without action on the part of Wyoming courts or officers. Wyoming officers have the same permission to make arrests in the other three states which are members of the compact. To the extent of the compact we are by-passing the extradition statutes.

The Wyoming legislature should adopt the changes recommended by the Commissioners on Uniform Laws, and the problem of interstate rendition of fugitives can be made progressively simpler through the adoption of additional agreements with sister states permitting law enforcement officers to make arrests within the boundaries of the states making such agreements.

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A POSSIBLE BAR TO IMPLIED COVENANTS IN WYOMING OIL AND GAS LEASES

Wyoming's progress in oil and gas production has made the rights and duties of the parties to an oil and gas lease of particular significance to attorneys practicing throughout the state. A particularly important phase of the law of oil and gas is the doctrine of implied covenants. Since the courts have talked of implied covenants in connection with ordinary leases, there has been a tendency to apply the same term to the obligation inferred in the oil and gas lease. By reason of the common lack of stipulations in oil and gas leases governing exploration, development, and operation, the courts have sought to decide these questions by the doctrine of implied covenants. The Wyoming Supreme Court and the Federal District Court of Wyoming indicate they recognize such covenants, yet one finds an apparent conflict with such a result upon examination of the Wyoming statutes.

A Wyoming statute provides that no covenants will be implied in any

35. Ryan v. Rogers, 21 Wyo. 311, 132 Pac. 95 (1913); Zulch v. Roach, 23 Wyo. 335, 151 Pac. 1101 (1915); Harris v. State, 23 Wyo. 487, 153 Pac. 881 (1916).
36. Wyoming Compiled Statutes §§ 10-2701 to 10-2704 (1945).