STATE OF SOUTH CAROINA)	IN THE COURT OF GENERAL SESSION	RECEIVED
COUNTY OF ANDERSON)		NOV 13 2014
STATE OF SOUTH CAROLINA,)	Warrant No: D-380027	SC Court of Appeals
)	J-878264	
v.)	75-GS-04-1111	
)		
HOWARD BLAKE,)	**ORDER**	
a/k/a Larry Barnett)		
)		
DEFENDANT/)		
PETITIONER.)		

A TRUE COPY

OCT 31 2014

CLERK OF COURT

The matter came before the Court on July 21, 2013, on the Defendant Howard Blake a/k/a Larry Barnett's Petition to Dismiss the Governor's Extradition Requisition dated January 9, 2006.[1] For the reasons set forth below, the Petition to Dismiss is denied.

I. Factual Background

On February 6, 1975, Defendant/Petitioner Larry Barnett (Barnett),[2] pleaded guilty to grand larceny and was sentenced to ten years hard labor, suspended in lieu of five years probation with conditions. Barnett was later arrested on July 23, 1975; on July 31, 1975, his grand larceny probation was revoked, and he was resentenced to seven years imprisonment. On April 8, 1976, he pleaded guilty to forgery and was sentenced to seven years concurrent to the earlier sentence and with credit for time served. Probation was terminated. On or about August 18, 1976, Barnett escaped from the Anderson County Stockade. On August 19, 1976, he was charged with escape from legal custody, and an arrest warrant was issued.

[1] In addition to the Extradition Requisition of January 2006 signed by Governor Sanford, Governor Haley signed a second Extradition Requisition dated December 12, 2012. Because the same issues are presented regarding both of these Requisitions, the parties agreed that the Court's findings apply to all requisitions that have been made from South Carolina to New York concerning Mr. Barnett.

[2] Petitioner/Defendant was born in Anderson, South Carolina with the name Larry Wayne Barnett. Mr. Barnett is also known as Howard Glenn Blake.

In 1993, Blake was arrested in New York on a demand for extradition from South Carolina. Governor Carroll A. Campbell, Jr., wrote a letter to the South Carolina Department of Corrections (SCDC) dated April 8, 1993, explaining his decision to "withhold [his] authorization to proceed" with the extradition of Barnett. The Governor wrote:

> Fully cognizant of the interests of the Department in this matter, I have reviewed the circumstances of this case, and believe it would be neither in the best interests of the Department, nor in those of the State of South Carolina, to pursue extradition of Mr. Barnett. Consequently, I will not sign the authorizations necessary to initiate extradition in this case, based upon my consideration of the exceptional circumstances.

On or about October 11, 2005, Barnett was arrested in New York. It was later determined that at the time of his arrest, there was no valid South Carolina warrant in existence, despite representations to the contrary.[3] Upon learning of the arrest, SCDC forwarded various records to the Governor's Office. On January 9, 2006, Governor Mark Sanford signed a Governor's Requisition for the return of Barnett to South Carolina based on the escape charge and the unexpired sentence. On January 12, 2006, New York Governor George E. Pataki signed a Governor's Warrant for the return of Barnett to South Carolina. Later, Governor Haley signed a Governor's Requisition dated December 12, 2012, for the return of Barnett for the fulfillment of the unexpired criminal sentence; the escape charges were not part of this Requisition. New York Governor Cuomo signed a Governor's warrant for the return of Mr. Barnett on January 15, 2013.

[3] NY Code § 570.08 governing demands for extradition does not require a warrant on an escape from confinement- just "a copy of a judgment of conviction or of a sentenced imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement

Barnett has been challenging his extradition in both New York and South Carolina. On January 12, 2010, in an appeal related to Barnett's habeas corpus petition, the Court of Appeals of New York held that Barnett "is a fugitive because he was convicted of a crime in South Carolina and escaped from incarceration. If, in 1993, or thereafter, South Carolina determined that it no longer sought to classify relator as a fugitive, it could have granted relator a pardon. Hence, relator's equitable arguments are more appropriately posited to South Carolina." People ex rel. Blake v. Pataki, 922 N.E.2d 869 (N.Y. Ct. App. 2010).

A few days later in South Carolina, on January 15, 2010, Barnett filed a Petition to Dismiss Governor's Extradition dated January 9, 2006, and a Motion to Stay Extradition Request. The Court subsequently signed a Consent Order filed January 15, 2010; the Order stated that the extradition of Mr. Barnett was stayed until further order of the Court. Following the Consent Order, the State filed a Motion to Lift Temporary Stay on September 16, 2010, in an abundance of caution to clarify that the Stay applied only to the State seeking physical custody of Defendant/Petitioner Larry Barnett from the State of New York; the State asked the Court "to lift the temporary stay to allow the State to take such action as it deems appropriate and in furtherance of the return of Mr. Barnett." The Court subsequently signed a Consent Order which clarified that "this language was intended to prevent South Carolina from obtaining physical custody of Defendant/Petitioner from the State of New York prior to his being heard on the merits [of the Petition to Dismiss]."

South Carolina continued to pursue Mr. Barnett, although the State did not take any action to obtain physical custody of Mr. Barnett, in accordance with the Order. On May 8, 2013, following a Motion by the State asking for Clarification or Guidance, the Court signed an Order explaining that the "State of South Carolina, including South Carolina officials, could take action

in furtherance of the extradition of Barnett, as long as they did not physically obtain custody of him prior to his being heard on the merits of his Petition to Dismiss."

Mr. Barnett filed an Amended Petition to Dismiss Requisition and Warrant dated June 20, 2013, seeking to amend the caption so that it would correctly reflect all of the warrant numbers in this matter. The Court granted this Petition to Amend the Caption.

Proceedings continued in New York. On June 22, 2010, the Defendant pleaded guilty in federal court to a charge of making false statements in a passport application. He was sentenced to five years probation. Also, following the October 2010 Order denying his Petition for writ of habeas corpus, Defendant filed a second amended petition seeking to vacate the extradition warrant. In its Order of October 17, 2012, the Supreme Court of New York found that Barnett was not entitled to a writ of habeas corpus vacating the extradition warrant and the question of whether the Defendant "is the person named in the request for extradition must be determined at a fact-finding hearing[.]" People ex rel. Blake v. Pataki, 99 A.D.3d 956 (N.Y. Sup. Ct. App. Div. 2012). The Court remanded the matter for a hearing on that question. After a hearing on January 17, 2013 at which identity was conceded, review of a petition dated January 22, 2013 which sought a writ of habeas corpus, and review of an Affirmation in Opposition with Memorandum of law dated February 20, 2013, the Supreme Court of Suffolk issued a Memorandum Decision and Order dated April 18, 2013. This judgment granted Barnett's habeas petition, vacated the 2013 Governor's Warrant, and dismissed the fugitive complaint. A motion to reargue and renew was denied by the same court in an Order dated September 9, 2013. On appeal, the Appellate Division, Second Department, by an Order dated July 16, 2014, reversed the judgment, dismissed the writ of habeas corpus, and reinstated the Governor's Warrant.

II. Law/Analysis

A. Pursuant to the separation of powers doctrine, this Court cannot dismiss a Governor's Requisition and has no jurisdiction to do so.

Because this Court cannot dismiss a Governor's Requisition and has no jurisdiction to do so pursuant to the separation of powers doctrine, I deny the Motion to Dismiss the Governor's Extradition request.

An Extradition Requisition signed by the Governor is a discretionary executive decision that cannot be dismissed by the Courts, pursuant to the separation of powers doctrine. The Governor acted within her constitutional authority and the authority of the Executive Branch, and the Judicial Branch cannot dismiss, vacate, or otherwise invalidate her decision.

Article I, § 8 of the Constitution of South Carolina provides as follows:

> § 8. Separation of powers.
> In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

The separation of powers mandate is followed by Articles III, IV and V, which delineate the authority and functions of the three departments of government. Article III says:

> 1. The legislative power of this State shall be vested in ... the "General Assembly of the State of South Carolina."

Article IV states:

> 1. The supreme executive authority of this State shall be vested in a Chief Magistrate, who shall be styled "The Governor of the State of South Carolina."

Article V specifies:

> 1. The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law.

"One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government to prevent the concentration of power in the hands of too few and provide a system of checks and balances." Edwards v. State, 383 S.C. 82, 678 S.E.2d 412 (2009) (citing State ex rel. McLeod v. McInnis, 278 S.C. 307, 295 S.E.2d 633 (1982)). "Under our system, the legislative department makes the laws, the executive department carries the laws into effect, and the judicial department interprets and declares the laws." Id.

In Rose v. Beasley, 327 S.C. 197, 489 S.E.2d 625 (1997), the Governor suspended Rose from his Office as Director of the Department of Public Safety; subsequently, the Governor ordered Rose removed from office. Rose appealed, and the Court held as follows: "A de novo hearing on appeal of an order by an executive body acting in a quasi-judicial capacity violates the separation of powers provision of our State constitution because judicial discretion cannot be substituted for that of an executive body." Id. (emphasis added) (citing Guerard v. Whitner, 276 S.C. 521, 280 S.E.2d 539 (1981); Bd. of Bank Control v. Thomason, 236 S.C. 158, 113 S.E.2d 544 (1960)). Similarly in the present case, this Circuit Court cannot substitute its discretion for that of the Governor.

It is important to note that the Requisition is a discretionary act on the part of the Governor – there can be no dispute as to this, as one Governor chose to exercise his discretion not to send the requisition and another Governor chose to exercise her discretion to send the requisition.[4] Thus it is not purely a ministerial act. While a Court may be able to review a ministerial act of a governor, it cannot review a discretionary act such as an extradition request. See Fowler v. Beasley, 322 S.C. 463, 472 S.E.2d 630 ("This Court has jurisdiction to review the

[4] Barnett acknowledged that this is a discretionary decision by his request to the Governor in 1993 and his most recent request to the Governor in 2012 to withdraw her extradition requisition.

ministerial acts of the governor.") (emphasis added). As our Supreme Court explained in Edwards v. State, supra, a case involving whether the Governor was obligated to take actions related to the American Recovery and Reinvestment Act: "A ministerial act or duty is one which a person performs because of a legal mandate which is defined with such precision as to leave nothing to the exercise of discretion."

Moreover, our Supreme Court has held that constitutional acts of the Governor cannot be reviewed by a Court; only if the Governor exceeds her constitutional authority can her acts be reviewed. In signing the Extradition Requisition, the Governor was acting within her constitutional authority. In Hearon v. Calus, 178 S.C. 381, 183 S.E. 13 (1935), the Court considered its power "to review the actions of the Governor in proclaiming that a condition of insurrection and rebellion existed, in calling out the militia and declaring martial law." The Court held that the "action of the Governor in declaring that a state of insurrection exists may not be enjoined by this court, nor reviewed by it." Id. The Court noted that it could review that Governor's decision as to whether he exceeded his constitutional authority. It stated "In determining whether challenged power has been constitutionally exercised, conditions to which power is addressed must be considered, but extraordinary conditions do not create or enlarge constitutional power and cannot justify action which lies outside sphere of constitutional authority." Id. (citing Schechter Poultry Corporation v. United States, 295 U.S. 495 (1935)). The Court explained that "it is generally recognized that the doctrine that the Courts will not reach the Governor in the performance of his duties, or anyone acting under his direction and by his authority in respect to any matter, applies only within the scope of executive authority; outside thereof the principle of equality before the law renders him and his agent liable to judicial remedies the same as any other person, except in so far as the dignity of his office should, and

does, protect him, and them to some extent from coercive interference by judicial mandate." Id. See also McConnell v. Haley, 393 S.C. 136, 711 S.E.2d 886 (2011) (finding Governor lacked constitutional authority to call extra session of General Assembly while it was already in annual session but in recess). Thus if the Governor exceeds her constitutional powers, then the Court may review her decision and find that such decision is unconstitutional. However, the Governor has not acted unconstitutionally in asking for the return of Mr. Barnett and therefore her requisition cannot be dismissed by this Court.

In the extradition context, courts in other states have held that separation of powers prevents the judiciary from dismissing a Governor's decision. In Alabama v. Engler, 85 F.3d 1205 (6th Cir. 1996), the Court held that New York's prior decision not to extradite a fugitive did not require a subsequent Governor to fail to extradite the fugitive to Alabama. The Court stated that "An executive decision by the Governor of Michigan is not reviewable by state courts." Id. (citing Germain v. Ferris, 142 N.W. 738 (Min. 1913)). See also State v. VanBuskirk, 527 N.W.2d 922 (S.D. 1995) (citing the trial court order), ("Under the separation of powers doctrine, the Governor's warrant is an executive warrant, over which the judiciary cannot intervene and dismiss that warrant.").

B. Governor's Campbell's 1993 letter does not preclude the State of South Carolina from pursuing this extradition.

1. The 1993 Governor's letter to the Department of Corrections does not bind the State in regards to the Defendant.

The Defendant contends that the same issues were before Governor Campbell in 1993, and this precludes the later Governor's Extradition Requisition. I disagree and find that the 1993

letter has no effect on the Defendant's fugitive status or the State's ability to seek his return to South Carolina. Also, I find that the facts and circumstances have changed since 1993.

Governor Campbell's letter was to the Commissioner of the SCDC only and is an instruction to SCDC not to proceed with the extradition process in regards to the Defendant at that time. The letter explains that the Governor's offices understands that SCDC "will seek extradition of Mr. Barnett should he chose (sic) not to execute a waiver." This language indicates that the Governor became aware that SCDC would begin the formal extradition process, but it had not already done so. Later in the letter, Governor Campbell stated, "I believe my position to withhold my authorization to proceed is justified." As the plain language of the letter states, the Governor instructed SCDC not to proceed. Significantly, the Governor stated he was withholding "my" authorization. He did not state that South Carolina could not pursue the matter in the future, he merely was withholding his own authorization based on the facts and circumstances presented at the time.

The Governor in South Carolina does not have authority to pardon the Defendant or grant him non-fugitive status. See S.C. Code Ann. § 24-21-930 ("An order of pardon must be signed by at least two-thirds of the members of the [Board of Probation Pardon & Parole Services]."). Thus the letter was simply a statement of one Governor's position, which he exercised in his discretion, as the plain language of the letter indicates, and it did not change the Defendant's status as a fugitive. As the Court stated in the Defendant's own case in New York: "[Barnett] is a fugitive because he was convicted of a crime in South Carolina and escaped from incarceration. If, in 1993 or thereafter, South Carolina determined that it no longer sought to classify [him] as a fugitive, it could have granted [him] a pardon." Blake, 922 N.E.2d at 869 (emphasis added).

Further, many of the circumstances Governor Campbell considered have changed. First, Campbell stated that "Mr. Barnett has apparently rehabilitated himself. . . . He has had no significant encounters with the criminal justice system." In 2010, the Defendant pled guilty to the federal crime of making a false statement in application/use of a passport and was sentenced to five years probation.

The Governor also considered the Defendant's "serious health problems" and the potential cost to the State. The discretionary decision of Campbell to consider the State's fiscal condition at the time and Barnett's health situation at the time is not applicable to the present situation since the State has decided to pursue the extradition.

The Court considered a similar situation in People ex rel. Harris v. Mahoney, 579 N.Y.S.2d 582 (1991). In that case, Defendant Harris escaped from prison in Alabama in 1964. In April 1967, the Governor of Alabama forwarded an extradition request to the Governor of New York, but the fugitive charges were dismissed after Harris spent 90 days in jail upon the New York Governor's failure to timely act on the requisition. Later on July 19, 1967, New York Governor Rockefeller signed an extradition warrant. Harris sought a writ of habeas corpus to prevent extradition. The Governor subsequently recalled his warrant in 1971. No other action was taken until 1990, when Alabama sent a new extradition request to New York Governor Cuomo, and Harris filed a habeas corpus petition. Harris' arguments included that he was not a fugitive and the withdrawal of the warrant was the law of the case, res judicata, and binding on successive New York Governors. The Court found that there was no factual adjudication made regarding his fugitive status. Just as in Harris, there was no factual finding in Governor Campbell's letter regarding Barnett's fugitive status. Accordingly, I find that Governor Campbell's letter is not binding on successive governors.

2. One governor's decision to withhold his "authorization to proceed" does not preclude a subsequent governor from signing an Extradition Requisition because this was not an action that was binding on a successive governor.

I further find that Governor Campbell's decision to without his authorization to proceed is not binding on his successors. In Bearden v. State, 223 S.C. 211, 74 S.E.2d 912 (1953), the Court stated as follows:

> Appellant was paroled by Governor Johnston . . . Governor Johnston preferred to pass upon the question of parole without the aid of the Probation, Parole and Pardon Board, which was then known as the Probation and Parole Board. He further determined that the Governor should be "the sole judge of what is meant by good behavior." He was at liberty to exercise this function so long as he remained in office but could not bind his successor to do so. Shortly after assuming office, Governor Thurmond apparently concluded that it would not be in the public interest for him to undertake the supervision of parolees or to pass upon the question of parole violations and transferred these duties to the Probation, Parole and Pardon Board.

(emphasis added) This is just one example of a Governor taking an action that is not binding on his successor. Other Courts have held that the action of one Governor is not binding on his successor. Alliance, AFSCME/SEIU, AFL-CIO v. Secretary of Admin. 597 N.E.2d 1012 (Mass. 1992) (citing Paisner v. Attorney Gen., 458 N.E.2d 734 (Mass. 1983); Dinan v. Swig, 112 N.E. 91 (Mass. 1916) ("[A] predecessor Governor cannot abrogate the constitutional powers of a successor Governor."); Ex parte Collie, 240 P.2d 275 (Cal. 1952) ("It is the general rule that one legislative body cannot limit or restrict its own power or that of subsequent Legislatures and that the act of one Legislature does not bind its successors. . . . A similar rule should apply to the head of the executive branch of state government. Accordingly, the present commutation cannot be given effect as a restriction on the power of later governors to grant further executive clemency.").

In the extradition context, courts have found that second and subsequent attempts to secure the return of fugitives are permitted. Although many of these cases are in the context of a habeas corpus proceeding, they show that successive efforts to return a fugitive are not precluded. In Engler, described above, the Court held that one New York Governor's prior decision not to extradite a fugitive was not binding on the subsequent Governor, and a subsequent Governor had the authority to extradite the fugitive to Alabama. In State v. Van Buskirk, 527 N.W.2d 922 (S.D. 1995), Van Buskirk challenged his extradition to Colorado on the ground that a prior extradition attempt by Colorado had been dismissed with prejudice. After the first attempt was dismissed, Colorado renewed its attempt, and Van Buskirk challenged the renewed proceedings on the ground that the earlier dismissal barred subsequent proceedings for his return to Colorado on the ground of res judicata. The Court found that the "discharge of the Defendant under the initial extradition proceedings did not serve as res judicata for any subsequent attempt to extradite him on those same charges." See also Castriotta v. State, 888 P.2d 927 (Nev. 1995) ("We conclude that an extradition proceeding is not res judicata as to subsequent proceedings."); Ex parte McClintick, 945 S.W.2d 188 (Tex. App. 1997), ("[T]he first extradition proceeding cannot act as res judicata to subsequent proceedings.").

C. The Governor's Extradition Requisition cannot be dismissed on equitable grounds.

In his Petition, Defendant contends that the Petition should be dismissed based on the "equitable grounds that South Carolina had actual notice of the Defendant's Petitioner's location in the State of New York for thirteen (13) years and failed to take any further action against the Defendant/Petitioner during that time." I find that this matter cannot be dismissed on equitable grounds.

When the Defendant was apprehended in 1993 in New York, South Carolina was notified that he was in New York; ultimately Campbell sent the letter to SCDC and the State did not pursue extradition at that time. Years later, on October 11, 2005, the Defendant was arrested in New York because a computer entry showed him as being a fugitive from the State of South Carolina. Once Campbell sent the letter to SCDC, the State did not take any affirmative action on the matter. While a subsequent Governor could have signed an Extradition Requisition, it is unlikely that any subsequent Governor was made aware of the Defendant's whereabouts or the situation until the 2005 notification from New York. Even if the State had actual knowledge of where the Defendant was, it did not waive any rights by not pursing Barnett; however, in this case, the State renewed its seeking of the Defendant once notified of his arrest and whereabouts by the State of New York. When Governor Campbell denied the extradition request in 1993, the Defendant continued to reside at the same address with the same phone number, and still does reside there. He has lived there since 1987.

The seminal case on laches in the extradition context is Strachan v. Colon, 941 F.2d 128 (2nd Cir. 1991), an appeal of the denial of a writ of habeas corpus heard in the early 1990's where the defendant challenged an extradition warrant to return a New York resident to Florida on charges he shot and killed a police officer in Florida in 1946. One of the arguments in the case was that where a state allows a 44 year lapse before requiring the accused to face charges, laches should bar his prosecution. In Strachan, the Court explained that "Petitioner and the state agree that no case has ever addressed whether laches applies to extradition cases." Although the Court did not reach the laches issue on the merits, it stated: "Nothing in the [United States] Constitution or in the applicable federal statute indicates that a fugitive has a right to 'speedy extradition' or that there exists a statute of limitations for extradition." The court also observed

that in Bassing v. Cady, 208 U.S. 386, 392-93, (1908), the Supreme Court held that even though Petitioner left a state with the knowledge and consent of the state authorities, he was still a fugitive. Thus, similarly even if the Defendant was in New York with South Carolina's knowledge, he was still a fugitive. Because the Defendant escaped from imprisonment so there can be no dispute that he left the State of South Carolina without the consent of state authorities.

In Ex Parte Sanchez, 987 S.W.2d 951 (Tex. Ct. App. 1999), the Court held that a demanding state was not precluded from seeking extradition even if the demanding state failed to take the defendant into custody 11 years earlier on a prior extradition order. Citing to other state cases taking various positions on the issue, the Court noted that "it appears to be generally agreed that a state does not forfeit its right to demand extradition by failing to act at the earliest opportunity."

In considering a delay in seeking a fugitive, the Court in In Re McBride, 254 P.2d 117 (1953) explained as follows:

> It is contended that the State of Illinois lost jurisdiction to arrest and return the prisoner to the penitentiary at Joliet by their failure and neglect to retake him until after the expiration of the term of his maximum sentence. It must be conceded as definitely settled in this State that from the date of his parole violation in December, 1931, he owed the State of Illinois service for the remainder of his maximum sentence, or eight years and approximately three and a half months. This term could be satisfied only by actual service, unless remitted by some legal authority. There were only two methods provided by law for this unsatisfied sentence to be legally remitted, (1) a compliance with the conditions of his parole followed by a discharge granted by the parole authorities, approved by the Governor; and (2) by a pardon or commutation of sentence by the Governor, the power to issue which cannot be delegated. It is conceded that these are the only methods by which the term of unsatisfied service could be remitted by some legal authority, and that no such authority had been exercised. The failure of officials to perform their duties creates no right in a defendant to have his discharge as a beneficiary of their failure.

Id. (citing People ex rel. Barrett v. Dixon, 56 N.E.2d 816 (Ill. 1944) (internal citations omitted). As applied to the present case, even if there was a delay, this does not create any right in the Defendant to have his sentence discharged as a result of this failure.

Laches is the negligent failure to act for an unreasonable period of time. Gibbs v. Kimbrell, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993). Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay suffers his adversary to incur expenses or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce these rights. Id. at 730. Delay alone in the assertion of a right does not constitute laches. Id. The party asserting laches must also satisfactorily show negligence, the opportunity to have acted sooner, and material prejudice before the bar in equity is complete. Wallace v. Timmons, 232 S.C. 311, 101 S.E.2d 844 (1958); Bell v. Mackey, 191 S.C. 105, 3 S.E.2d 816 (1939). Prejudice is an essential element of laches. In order to constitute laches, the delay in bringing suit must have caused some injury, prejudice or disadvantage to the party claiming laches. Gibbs. In the present case, I find that there has been no unreasonable delay. Moreover, even assuming there was a delay, I find that there has been no material prejudice to the Defendant, as during this time he has been able to live his life in New York rather than be incarcerated in South Carolina. If anything, he has benefitted from the delay and this defeats the equitable argument of laches. Moreover, in the traditional context where a fugitive is charged with a crime, the passing of time can mean the loss of witnesses, evidence, and other information that could be helpful to a Defendant; in connection with a fugitive who has escaped from prison, the passage of time means that the fugitive has continued to remain free rather than serve his sentence.

Further, the Defendant in the present case is being sought because he has an unfulfilled sentence with SCDC.[5] This is not a situation where there was a delay in prosecution or where witnesses may be gone; to the contrary, the Defendant is being sought because of his escape. South Carolina law requires that an inmate serve his time even if has escaped and been away from the State for a period of years. "As a general rule, a sentence can be satisfied only by death, service of the required time, or relief therefrom by competent authority." Delahoussaye v. State, 369 S.C. 522, 633 S.E.2d 158 (2006) (citing Oglesby v. Leeke, 263 S.C. 283, 210 S.E.2d 232 (1974)). In Delahoussaye, the Court found that the Defendant was not entitled to credit on his South Carolina armed robbery sentence for federal time served after he escaped from SCDC's custody. This shows that an escape tolls the running of the sentence an inmate is serving. In Oglesby, Defendant escaped and his absence from SCDC was because of his escape and his resistance to efforts of the State of South Carolina to affect his return for the service of his sentence. The Court held that "Under the present facts, the escape of appellant tolled the running of the sentence he was then serving and the time of his imprisonment under that sentence did not again begin to run until his return to the South Carolina prison[.]" Oglesby, 263 SC. At 287, 210 S.E.2d 234 (citing 21 Am.Jur.2d Criminal Law, Section 545; 24B C.J.S. Criminal Law s 1995(7); Vaughn v. Commonwealth of Virginia, 307 F.Supp. 688 (W.D. Vir. 1969); Phillips v. Dutton, 378 F.2d 898 (5th Cir. 1967).

[5] Although Governor Sanford's requisition in 2006 was for the unfulfilled sentence and the pending charge, Governor Haley's requisition is for the unfulfilled sentence only.

III. Conclusion

Based on the foregoing reasons, I deny the Petition to Dismiss the Governor's Extradition Request.

AND IT IS SO ORDERED.

ALEXANDER S. MACAULAY, Judge

October 30, 2014
Anderson, South Carolina