STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

Appellate Case No. 2014-002427

THE STATE .....RESPONDENT

v.

HOWARD BLAKE A/K/A LARRY BARNETT .....APPELLANT.

REQUEST FOR EXPEDITED REVIEW,
MOTION TO DISMISS,
AND
RETURN TO MOTION FOR STAY PENDING RESOLUTION OF APPEAL

The State of South Carolina respectfully asks this Court to Dismiss the Appeal and also submits this as a Return to Appellant Howard Blake a/k/a Larry Wayne Barnett's Motion for Stay Pending Resolution of Appeal. Barnett is a convicted felon and fugitive who escaped from the South Carolina Department of Corrections in 1976, and this is an appeal of the Circuit Court's Order denying his Petition to Dismiss the Governor's Extradition Requisition. Because Barnett is currently in New York and available for South Carolina authorities to transport him back to South Carolina, the State asks for expedited review of this matter.

I. Request for Expedited Review

On November 20, 2014, Barnett surrendered in New York pursuant to the Governor's Warrant in New York. Despite the surrender, he has yet to indicate any

willingness to come to South Carolina, as evidenced by his Motion for Stay in this Court. The State of South Carolina asks that the Court take action on the Motion to Dismiss and Motion for Stay as soon as possible so that the State can make any needed travel arrangements for the return of Barnett. The pending Motion for Stay is the only reason that the State is not picking up Barnett now and bringing him to South Carolina to complete his sentence, a sentence he has avoided for the last 38 years. The State is concerned that any delay in retrieving Barnett from New York will be utilized by Barnett as a basis to argue for his release in New York. Because of the extraordinary circumstance that a convicted felon is in custody in New York and available for return to South Carolina, the State asks for expedited review.

The State asks for expedited review of all matters before the Court. However, if the Court is not able to rule on the Motion to Dismiss, the State would ask for a ruling on the Motion for Stay, as both the Motion and Return will be before the Court.

II. Factual Background

On February 6, 1975, Appellant Howard Blake a/k/a Larry Barnett (Barnett), 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.

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.

On or about October 11, 2005, Barnett was arrested in New York. Upon learning of this, 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. Governor Haley signed another 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. See attached Exhibit A.

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." People ex rel. Blake v. Pataki, 922 N.E.2d 869 (N.Y. Ct. App. 2010). See opinion attached as Exhibit B.

A few days later in South Carolina, on January 15, 2010, Barnett filed a Petition to Dismiss Governor's Extradition dated January 9, 2006. An Amended Petition was filed seeking to amend the original caption to include all of the warrant numbers, and

Judge Macaulay granted the Amendment. Judge Macaulay held a hearing on July 21, 2013. By Order filed October 31, 2014, the Court denied the Petition to Dismiss. See attached Exhibit C. This appeal followed.

Proceedings continued in New York during the pendency of the South Carolina matters. 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 . . . " People ex rel. Blake v. Pataki, 99 A.D.3d 956 (N.Y. Sup. Ct. App. Div. 2012). See opinion attached as Exhibit D. In yet another proceeding in New York, the trial court granted Barnett's habeas petition, vacated the 2013 Governor's Warrant, and dismissed the fugitive complaint. However, after Defendant appealed, 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. See opinion attached as Exhibit E.

On November 20, 2014, Barnett surrendered to New York authorities pursuant to the New York Governor's Warrant that arose because of the South Carolina Requisition. He is currently in custody in New York but has still not indicated a willingness to voluntarily come to South Carolina.

III. Motion to Dismiss

Because Mr. Barnett escaped from the South Carolina Department of Corrections (SCDC) in 1976 and has not returned to the State, this appeal should be dismissed.

"Dismissal of a litigant's appeal has been recognized as a proper sanction for his or her contemptuous conduct." Scelba v. Scelba, 342 S.C. 223, 535 S.E2d 668 (Ct. App. 2000). ""Furthermore, [u]nder the court's inherent power to ignore the demands of litigants who persist in defying the legal orders and processes of the jurisdiction, the court may dismiss an appeal by a person who stands in contempt of court in the proceeding in which he seeks to take an appeal." Id. (citing 17 Am.Jur.2d Contempt § 226, at 578 (1990)). This discretionary right of an appellate court to refuse to hear an appeal, a right known as the "fugitive disentitlement doctrine," has been recognized by the United States Supreme Court. The policy behind the doctrine has since been explained as follows:

> The rationales for this doctrine include the difficulty of enforcement against one not willing to subject himself to the court's authority, the inequity of allowing that "fugitive" to use the resources of the courts only if the outcome is an aid to him, the need to avoid prejudice to the nonfugitive party, and the discouragement of flights from justice.

Id. (citing United States v. Barnette, 129 F.3d 1179 (11th Cir.1997); Ortega-Rodriguez v. United States, 507 U.S. 234, 113 S.Ct. 1199, 122 L.Ed.2d 581 (1993); Molinaro v. New Jersey, 396 U.S. 365, 90 S.Ct. 498, 24 L.Ed.2d 586 (1970)).

In order for an appellate court to invoke the fugitive disentitlement doctrine to dismiss an appeal, two prerequisites must be met: (1) the appellant must be a fugitive; and (2) there must be a connection between the fugitive status and the appellate process the appellant seeks to utilize. Id. Both requirements are satisfied here: (1) Barnett is a fugitive; (2) this matter relates to his fugitive status and his return to South Carolina to complete his sentence.

In Lamb v. State, 293 S.C. 174, 359 S.E.2d 282 (1987), Lamb escaped from SCDC. The Supreme Court learned this while his Petition for Rehearing was pending. Based on the escape, the Court vacated is opinion and dismissed the appeal. The Court quoted Jordan v. State, 276 S.C. 168, 276 S.E.2d 781 (1981), wherein the Court stated as follows: "This Court declines to hear the appeal of a party who by his escape evades the process of the Court and refuses to submit himself to its jurisdiction." In Jordan, the Appellant escaped from South Carolina custody in approximately sixteen months after his conviction. The court explained that it "decline[d] to hear the appeal of a party who by his escape evades the process of the Court and refuses to submit himself to its jurisdiction." Id. (citing State v. Murrell, 33 S.C. 83, 11 S.E. 682 (1890); State v. Johnson, 44 S.C. 556, 21 S.E. 806 (1895)).

"Disposition by dismissal of pending appeals of escaped prisoners is a longstanding and established principle of American law." Estelle v. Dorrough, 420 U.S. 534 (1975) (citing 18 Geo.Wash.L.Rev. 427, 429 (1950)). The United States Supreme Court itself has followed the practice of declining to review the convictions of escaped criminal defendants. See Smith v. United States, 94 U.S. 97, 24 L.Ed. 32 (1876); Bonahan v. Nebraska, 125 U.S. 692, 8 S.Ct. 1390, 31 L.Ed. 854 (1887); Eisler v. United States, 338 U.S. 189, 69 S.Ct. 1453, 93 L.Ed. 1897 (1949); id., at 883, 70 S.Ct. 181, 94 L.Ed. 542; cf. Allen v. Rose, 419 U.S. 1080, 95 S.Ct. 669, 42 L.Ed.2d 675 (1974).

While the current matter is not an appeal of Barnett's criminal prosecution, it relates to the Governor's Extradition Requisition and whether Barnett must come back to South Carolina to complete his sentence with SCDC. Because Barnett escaped and has not submitted to the jurisdiction of South Carolina by returning here, this appeal should

be dismissed. It is important to note that the fugitive disentitlement doctrine applies not just in the context of an escape following a conviction after criminal prosecution, but in other types of appeals as well. For example, Scelba was an appeal from divorce action, and the Court dismissed the appeal based on the fugitive disentitlement doctrine.

Moreover, Barnett has availed himself of the Courts in the asylum state, New York, for many years, and there have been three reported appellate decisions regarding his Petitions in New York relate to this matter. Please see attached Exhibits B, D, and E. "[T]he regularity of extradition proceedings may be attacked only in the asylum state . . ." AmJur Extradition § 149 (citing Ker v. People of State of Illinois, 119 U.S. 436, 7 S. Ct. 225, 30 L. Ed. 421 (1886); People v. Klinger, 149 N.E. 799 (Ill. 1925); State v. Wellman, (Kan. 1918); Walker v. McCormick, 858 P.2d 373 (Mont. 1993); Ex parte Baker, 65 S.W. 91 (Tex. Crim. App. 1901)). While he can challenge the matter in New York, as an escaped convicted felon who has not returned to South Carolina, he cannot avail himself of the appellate courts in South Carolina.[1]

Although at this time he is in custody and available for South Carolina authorities to return him, it is important to note that Barnett remains a fugitive. A fugitive is "person who flees or escapes; a refugee" or a "criminal suspect or a witness in a criminal case who flees, evades, or escapes arrest, prosecution, imprisonment, service of process, or the giving of testimony, esp[ecially] by fleeing the jurisdiction or by hiding." Black's Law Dictionary. As noted above, the Court of Appeals of New York explained Barnett's status as follows:

> A fugitive is one who, "having committed a crime in a demanding State, is present in an asylum State when a demanding State seeks to prosecute the

[1] The State argued that the Circuit Court did not have jurisdiction, and the Court agreed based on the separation of powers doctrine. See attached Exhibit C.

> offense" (People ex rel. Strachan v. Colon, 77 N.Y.2d 499, 502–503, 568 N.Y.S.2d 895, 571 N.E.2d 65 [1991]). [Barnett] is a fugitive because he was convicted of a crime in South Carolina and escaped from incarceration.

People ex rel. Blake v. Pataki, 922 N.E.2d 869 (N.Y. Ct. App. 2010), attached as Exhibit B. His surrender pursuant to the Governor's warrant does not change his status as a fugitive. Because Barnett is a fugitive, he is not entitled to appellate review. Accordingly, this appeal should be dismissed.

IV. Return to Motion for Stay Pending Resolution of Appeal

Barnett has fought extradition for years, and his Motion for Stay Pending Resolution of Appeal is his latest attempt to avoid his sentence in South Carolina. The State asks the Court to deny the Motion for Stay so that Barnett can complete his South Carolina sentence.[2]

A. Stay

Rule 246 of the South Carolina Appellate Court Rules does not apply in the present case. This rule explains that "service of a notice of appeal by a criminal defendant shall operate as a stay of execution of the sentence until the appeal is finally disposed of; provided, however, a sentence of confinement shall not be stayed until the defendant has posted bail under S.C. Code Ann. § 18-1-80 and - 90 (1985)." The rule does not apply because the present matter is the appeal of Judge Macaulay's Order Denying Barnett's Petition to Dismiss the Governor's Extradition Request. This is not a case where Barnett was sentenced by the trial court and that decision could be reversed. Rather, Barnett owes time to the Department of Corrections following his escape in 1976.

[2] The State believes that it is not stayed from returning Barnett to South Carolina. However, the State files this Return and asks the Court to deny the Motion for Stay in an abundance of caution.

Further, Rule 246 states that the bail must be posted pursuant to S.C. Code Ann. § 18-1-80. This section states that "Pending such appeal the defendant shall still remain in confinement until he give bail in such sum and with such sureties as to the court shall seem proper." By stating that the bail is posted pending "such" appeal, the statute contemplates that the appeal is of the sentence itself. This is reasonable given that a defendant may have his conviction reversed and in some cases may be allowed to be out on bail pending the appellate decision and possible reversal. The fact that these bail statutes apply only to appeals from convictions and not other matters is confirmed by the language of section 18-1-90. This section states as follows: "Bail may be allowed to the defendant in all cases in which the appeal is from the trial, conviction, or sentence for a criminal offense. However, bail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years." These are only in the criminal conviction context and bail in any other way is not contemplated.

Because the bail relates only to a criminal prosecution, the stay itself in this section relates only to criminal prosecutions. Accordingly, there are no grounds for a stay of any matter pending resolution of the appeal.

Moreover, by escaping and failing to return in 38 years, Barnett has evaded the process of the Court and refused to submit himself to its jurisdiction. Just as the fugitive disentitlement doctrine explains that a Court can dismiss an appeal for an escape, the Court should not consider a stay for a convicted felon who has already shown his unwillingness to appear in South Carolina.

B. **Bail**

As explained above, the bail statutes do not apply in the present case because Barnett is not appealing a conviction and sentence. Therefore the State asks the Court to deny bail. He is not in South Carolina, and the Court is unable to grant bail as long as he remains outside this Court's jurisdiction. Just as the court should not consider an appeal or a stay for a convicted felon who escaped, it should not consider bail him.

Also, regarding bail, courts have held that an accused who had been arrested upon a governor's warrant of extradition was not entitled to bail pending the disposition of court proceedings. Typically the court proceedings are habeus corpus proceedings in the state where the fugitive has been found. In Ex parte Smith, 624 S.W.2d 671 (Tex. App. 1981), a case involving a convicted felon held in an extradition proceeding, the Court found that the trial judge exceeded his jurisdiction in granting bail, noting "it has long been the rule that bail is not to be allowed a convicted felon held in an extradition proceeding." Id. (citing Ex parte Gallogly, 138 Tex.Cr.R. 115, 134 S.W.2d 666 (Tex. Cr. R. 1939) and Ex parte Quinn, 549 S.W.2d 198 (Tex. Cr. App. 1977)).

V. Conclusion

For all of the foregoing reasons, the State respectfully requests expedited review of this matter. The State asks that the Court dismiss the appeal pursuant to the fugitive entitlement doctrine. If the Court does not dismiss the appeal or needs additional time to consider dismissal, the State asks the Court to deny the Motion to Stay so that Barnett can complete his sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

MARY FRANCES JOWERS
Assistant Deputy Attorney General

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S.C. Bar No. 68413

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(803) 734-3996

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
November ____, 2014

Exhibit List

Exhibit A Governor's Requisition dated December 12, 2012, and related materials

Exhibit B People ex rel. Blake v. Pataki, 922 N.E.2d 869 (N.Y. Ct. App. 2010)

Exhibit C Order of Judge Macaulay filed October 31, 2014

Exhibit D People ex rel. Blake v. Pataki, 99 A.D.3d 956 (N.Y. Sup. Ct. App. Div. 2012)

Exhibit E People ex rel. Blake v. Ewald, 119 A.D. 3d 824 (N.Y.A.D. 2 Dept. 2014)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
)
THE STATE)
)
V.)
)
LARRY WAYNE BARNETT AKA HOWARD GLENN BLAKE)

APPLICATION FOR EXTRADITION REQUISITION

NOW COMES WILLIAM R. BYARS, JR., DIRECTOR OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, AND CERTIFIES:

A. That Larry Wayne Barnett aka Howard Glenn Blake is the name for whom extradition is asked and that it is requested that Inspector General Jerry Adger of the South Carolina Department of Corrections and/or his authorized agent be designated to act as agent for the State.

B. That, in his opinion, the ends of public justice requires that Larry Wayne Barnett aka Howard Glenn Blake be brought to this State at public expense for fulfillment of his unexpired criminal sentence.

C. That the person(s) whom I hereby propose be designated as agents of the State are Clay Conyers and Karen Hair of the South Carolina Department of Corrections. The person(s) named are public officers and are proper person(s) to be designated and have no private interest in the return of said person.

D. That Larry Wayne Barnett aka Howard Glenn Blake, the fugitive is present in the State of New York.

E. The ends of justice require the arrest and return of said person to this State to complete the remainder of his aggregated term of imprisonment of which he owes 5 years, 4 months and 25 days (1945 days.)

F. This application and related proceedings have not been instituted for the purpose of enforcing the collection of a debt, enforcing a civil remedy, or for any private purpose, and if the requisition is granted, the proceedings shall not be used for any of such purpose.

G. That Larry Wayne Barnett aka Howard Glenn Blake was sentence in Abbeville County, S.C. on February 7, 1975 by the Honorable Rodney A. Peeples to the term of ten years suspended to five years probation for the offense of Grand Larceny. Subsequently, on July 31, 1975, the Honorable E. Harry Agnew in Anderson, S.C. revoked his probation and sentenced him to a term of seven years and five years probation. Additionally, Barnett was sentenced on April 8, 1976 in Anderson County, S.C. by the Honorable E. Harry Agnew to six counts of Forgery to a term of seven years. Barnett was admitted to SCDC on April 19, 1976 and subsequently returned to the Anderson County Designated Facility that same date. On August 18, 1976, Barnett left the designated facility without proper authorization and remains at large.

H. Such Fugitive has fled from the justice of this state.

I. Such Fugitive has taken refuge in the State of New York.

J. Such Fugitive was present in this State at the time such crime was committed.

K. That the expense of the return and trial of said person shall be charged upon the South Carolina Department of Corrections.

L. That, in support of this application, I enclose true and correct copies of the Judgments and Sentences, Supporting Affidavit, and a photograph of the fugitive.

Executed at Columbia in the County of Richland and State of South Carolina, this the 11 day of December, 2012.

Director William R. Byars, Jr.

South Carolina Department of Corrections

#2

N. Dayna Hall

Notary for State of South Carolina
County of Richland
My Commission expires: 4/6/14

STATE OF SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS

CERTIFICATE OF EXEMPLIFICATION

I, Janice Wright Kenealy, Inmate Records Office Supervisor, do hereby certify that the foregoing and herein writings annexed to this Certificate are true copies of originals on file and of record of the South Carolina Department of Corrections.

In witness whereof, I have hereunto set my hand of the Department this date.

Janice W Kenealy
Inmate Records Office Supervisor

12-4-12
Date

I, William R. Byars, Jr., Director do hereby certify that, Janice Wright Kenealy, whose name is signed to the preceding certifications, is the Inmate Records Office Supervisor, duly authorized to certify/authenticate the records maintained by the South Carolina Department of Corrections.

12/4/12
Date

W R Byars Jr
Director

STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND

I, Janice W. Kenealy, certify that I am the Records Manager. Working for the Chief, Inmate Records Office, keeper of the official Central Office Inmate Records, of said Department, for the South Carolina Department of Corrections and, as such I am authorized to certify official inmate records of said Department. I certify that the attached copy(s) of documents are from the Inmate Record(s) belonging to:

Name: Larry Wayne Barnett **SCDC #** 81322

Is a true and correct copy(s) of the said documents, which are on file in the State of South Carolina Department of Corrections.

This is the 14th **day of** November **2012**

S/ Janice W Kenealy
Janice W. Kenealy
Records Management Supervisor
Inmate Records Office
South Carolina Department of Corrections

Attachment(s)

Sworn to and subscribed before me

This 14th day of November 2012

Susan C Nesbitt

Notary Public of South Carolina
My Commission expires: January 15, 2020

Defendant [redacted] 81322

OFFENSE [redacted]

The sentence of the Court is that the defendant, [redacted]

Be Confined at hard labor upon the Public Works of [redacted]

County for a term of one (1) years, or for a like term in the State Dept. of Corrections, or pay a fine of $[redacted] provided that upon the service of [redacted] or payment of $[redacted] that the balance of the aforesaid sentence be and the same is hereby suspended and that the said defendant is

hereby placed on probation for a period of five (5) years under the supervision of the South Carolina Probation and Parole Board and its officers, subject to the provisions of the laws of this state and the rules and orders of the Board and its officers, with leave that the suspended sentence may be revoked at any time during the period of probation at Chambers, or in open Court, upon recommendation of said Board.

THAT AS CONDITIONS OF PROBATION THE AFORESAID SHALL:

(a) Refrain from the violation of any State, Federal of Municipal Penal Law
(b) Avoid injurious or vicious habits of conduct
(c) Avoid persons and places of disreputable or harmful character
(d) Support all dependants
(e) Work faithfully at suitable employment
(f) Agree to waive extradition from any State
(g) Report to the Probation Officer as directed
(h) Remain within the State of S.C. (unless given permission by Judge or Board to go out of the State of South Carolina)
(i) Follow Probation Officer's advise and instructions regarding recreational and social activities
(j) Pay a fine in one or several sums as directed by the Court

SPECIAL CONDITIONS AS ORDERED BY THE COURT: [redacted]

A TRUE COPY
[redacted]
CLERK OF COURT
ABBEVILLE COUNTY

That the Sheriff or other law enforcement officers, who have the custody of the defendant, is hereby ordered to deliver said defendant to the Probation Officer of this district, or if defendant is under bond, then such bond shall remain in full force until said defendant reports to the Probation Officer. The conditions of probation begin (today) (after service of required portion of suspended sentence). It is further ordered that this order be filed by the Clerk of Court in his office and that he forthwith forward copy (certified) to the Probation Officer or the South Carolina Probation and Parole Board.

This 7th day of February

S/ Rodney A. Peeples
Presiding Judge

19 75, Abbeville, S.C. Eight Circuit

CERTIFIED TRUE COPY
[redacted]
Records Officer, S. C. Dept. of Corr.
Date 11-14-12

sentenced on February 7 19 75, In the General Sessions

Court of Abbeville County

for the offense of Grand Larceny and was

given a sentence of Ten (10) years in the custody of the Board of

Corrections of the State of South Carolina ~~(and)(or) pay a fine of~~ xxxxxxxxxx,

which sentence was suspended ~~upon the service of~~ xxxxxxxxxxxxxxxxxxxxxxxxxxxxx

~~(And)(or) payment of~~ xxxxxxxxxxxxxxxxxxxxxx and the defendant was placed on

probation for a period of ~~Five (5)~~ years.

THE CONDITIONS OF PROBATION BEING:

(1) Refrain from the Violation of any State, Federal or Municipal Laws.
(2) Refrain from associating with any person who has a criminal record.
(3) Refrain from the unlawful use of intoxicants and you will not frequent places where intoxicants are sold unlawfully.
(4) Refrain from the unlawful use of Narcotic Drugs and you will not frequent places where drugs are sold, dispensed or used unlawfully.
(5) Refrain from having in your possession firearms or other weapons unless granted written permission by your supervising Probation Agent.
(6) Work diligently at a lawful occupation.
(7) Remain within the State of South Carolina unless permitted to leave by your supervising Probation Agent.
(8) Agree to waive extradition from any State of the United States.
(9) Follow the advice and instructions of the Probation Agent.
(10) Permit the Probation Agent to visit your home, place of employment or elsewhere at any time.
(11) Report to the Probation Agent as directed.
(12) Pay all fines as ordered by the Court.

SPECIAL CONDITIONS ORDERED BY THE COURT:

None.

CERTIFIED TRUE COPY
S.C. Dept. of Corr.
Date 11-14-12

It is now brought to my attention that this defendant has now violated sections 7, 9 & 11 of the conditions of his probation by: (7). By failing to remain within the State of South Carolina Unless permitted to leave by your supervising Probation Agent; (9), by failing to follow the advice and instructions of the Probation Agent; & (11), by failing to report to the Probation Agent as directed.

It is therefore ordered that the suspended sentence be revoked and the said defendant, Larry Wayne Barnett be required to serve Seven (7) years of original sentence ~~(and)(or) pay~~ xxxxxxxxxxxxxxxx less good behavior allowance as provided by statue; thereupon to be reinstated on active supervision under and subject to the original probation sentence as if specific period and conditions were herein rewritten.

This 31st Day of July

Presiding Judge

19 75, Anderson S.C. Tenth Judicial Circuit

#03447

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

November Term, 1975

3406 **THE STATE**

vs.

Larry Wayne Barnette

INDICTMENT FOR

Forgery (Common Law)

TRUE BILL
DATE 11/10/75

Foreman of Grand Jury

Foreman

McCAW PRINTERS, 2510 DEVINE ST., COLUMBIA, S. C. 29205

Larry Wayne Barnette

This 8 April 1976

Larry Wayne Barnett

Date 4-15-76

A TRUE COPY:

Linda DeShields
DC Clerk of Court

Larry Wayne Barnette
Seven (7) years

4-8-76

Credit to be given

Harry Agnew

CERTIFIED TRUE COPY

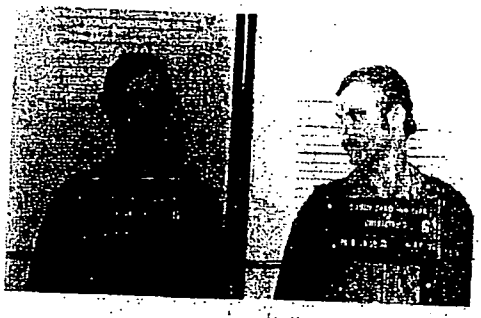
Records Officer, S. C. Dept. of Corr.

Date 11-14-13

STATE OF SOUTH CAROLINA LAW ENFORCEMENT DIVISION
P.O. BOX 21398, COLUMBIA, SOUTH CAROLI

PHOTO AVAILABLE? YES [X] NO [ ]

IF AVAILABLE, PASTE PHOTO OVER INSTRUCTIONS IN DOTTED AREA.



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STATUTE CITATION CIT

1.
2.
3.

ARREST DISPOSITION ADM

EMPLOYER:

OCCUPATION
Salesman

RESIDENCE OF PERSON FINGERPRINTED
306 Brookhaven Dr, Anderson, SC

SCARS, MARKS, TATTOOS, AND AMPUTATIONS SNT
"DARCIE" Tattoed Upper L/arm/ Dot Tattoed R/cheek

BASIS FOR CAUTION ICU

DATE OF OFFENSE DOO SKIN TONE SKN Light

MISC. NO. MNU

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SCLED000
SOUTH CAROLINA LAW ENFORCEMENT DIVISION
P. O. BOX 21398
COLUMBIA, SOUTH CAROLINA 29221

REPLY DESIRED? YES [ ] NO [X]

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CERTIFIED TRUE COPY
Janice Kovaly
Records Officer, S. C. Dept. of Corr.
Date 11-14-12

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TYPE OR PRINT ALL INFORMATION IN BLACK

BARNETT, Larry Wayne

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A/12

STATE USAGE

SC0450550
ADLT REC & EVAL CTR
COLUMBIA S.C.

DOB 9 5 49

4/19/78

4/19/78

Forgery (Common Law)

7 Yrs.

4/19/76

81322

38GHSL11

SOC 249-80-4024

SEX	RACE	HGT	WGT	EYES	HAIR	PLACE OF BIRTH
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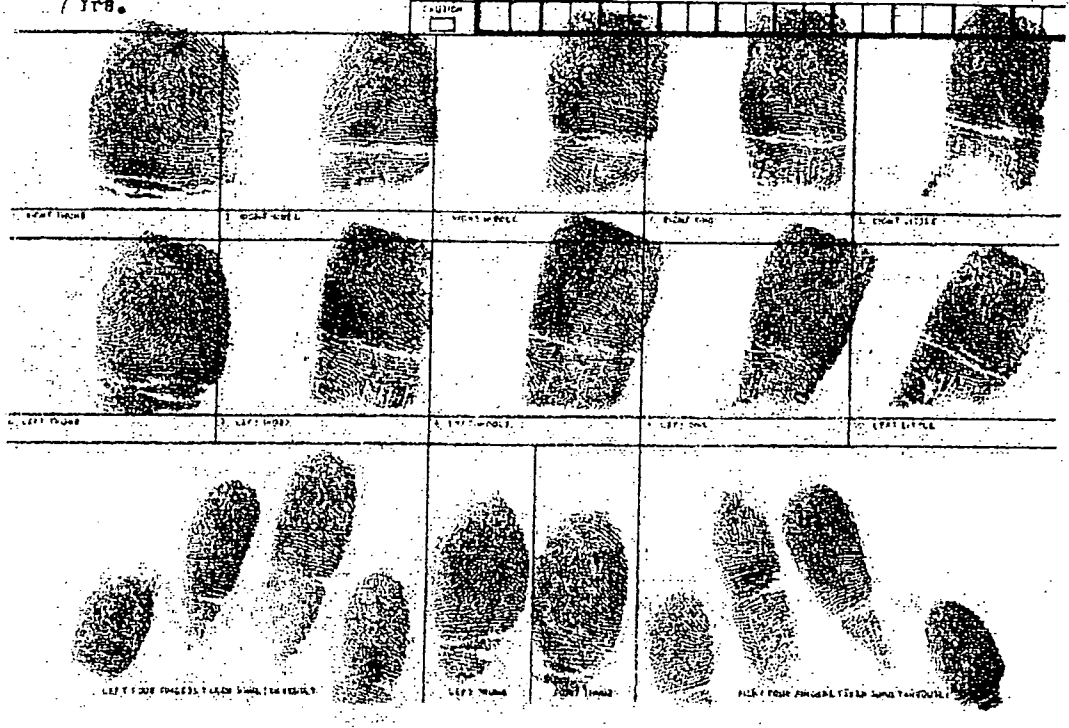


CERTIFIED TRUE COPY
Janice Kenealy
Records Officer, S. C. Dept. of Corr.
Date 11-14-12

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF MICHAEL J. STOBBE
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, Michael J. Stobbe, who upon oath deposes and says: I, Michael J. Stobbe, am employed by the South Carolina Department of Corrections (SCDC) as Branch Chief of Records Management and Release, Inmate Records Office. The following is my statement: Inmate Larry Wayne Barnett, SCDC #81322, white male, DOB: September 5, 1949, SSN: 249-80-4024, FBI# 386415L11, SID# SC00086466.

Inmate Barnett was originally sentenced in Abbeville County, S.C. on February 7, 1975 by the Honorable Rodney A. Peeples to the term of ten years suspended to five years probation for the offense of Grand Larceny. Subsequently, on July 31, 1975, the Honorable E. Harry Agnew in Anderson, S.C. revoked his probation and sentenced him to a term of seven years and five years probation.

Additionally, Inmate Barnett was sentenced on April 8, 1976 in Anderson County, SC by the Honorable E. Harry Agnew to six counts of Forgery, Indictment Numbers 75-GS-04-1111, 1113, 1114, 1115, 1116 and 1117 to a term of seven years. Inmate Barnett was admitted to SCDC on April 19, 1976 and subsequently returned to the Anderson County Designated Facility that same date. On August 18, 1976, Inmate Barnett left the designated facility without proper authorization and remains at large.

Inmate Barnett is required by state statute to satisfy a seven year sentence (2,520 days.) Presently, Inmate Barnett has satisfied one year, seven months and five days (575 days.) The balance remaining to satisfy his sentence is five years, 4 months and 25 days (1945 days.)

Inmate Barnett has not satisfied the entirety of his sentences received on July 31, 1975 and April 8, 1976. It is projected that Inmate Barnett could satisfy his remaining sentence in three years and two months (1140 days) should all available good time credit be earned.

It is respectfully requested that a warrant for his arrest be issued so that he may be returned to the custody of SCDC until such time as his sentence is satisfied.

I have this date been provided a copy of this affidavit and hereby acknowledge receipt thereof.

Michael J. Stobbe

Sworn to and Subscribed before me
this 13th day of November, 2012

SEAL
Notary Public, State of South Carolina
My Commission Expires: January 15, 2020

SECTION 16-13-10. Forgery.

(A) It is unlawful for a person to:

(1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing;

(2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing;

(3) falsely make, forge, counterfeit, alter, change, deface, or erase, or cause or procure to be falsely made, forged, counterfeited, altered, changed, defaced, or erased any record or plat of land; or

(4) willingly act or assist in any of the premises, with an intention to defraud any person.

(B) A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the amount of the forgery is ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the amount of the forgery is less than ten thousand dollars.

(C) If the forgery does not involve a dollar amount, the person is guilty of a misdemeanor under the jurisdiction of the magistrates or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 16-351; 1952 Code Section 16-351; 1942 Code Section 1211; 1932 Code Section 1211; Cr. C. '22 Section 99; Cr. C. '12 Section 528; Cr. C. '02 Section 373; G. S. 2527; R. S. 295; 1736-7 (3) 470-1 Sections 3-7; 1783 (4) 543; 1801 (5) 397; 1845 (11) 341; 1930 (36) 1203; 1993 Act No. 184, Section 106; 1995 Act No. 7, Part I Section 5; 2010 Act No. 273, Section 16.D, eff June 2, 2010.

SECTION 16-13-30. Petit larceny; grand larceny.

(A) Simple larceny of any article of goods, choses in action, bank bills, bills receivable, chattels, or other article of personalty of which by law larceny may be committed, or of any fixture, part, or product of the soil severed from the soil by an unlawful act, or has a value of two thousand dollars or less, is petit larceny, a misdemeanor, triable in the magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days.

(B) Larceny of goods, chattels, instruments, or other personalty valued in excess of two thousand dollars is grand larceny. Upon conviction, the person is guilty of a felony and must be fined in the discretion of the court or imprisoned not more than:

(1) five years if the value of the personalty is more than two thousand dollars but less than ten thousand dollars;

(2) ten years if the value of the personalty is ten thousand dollars or more.

HISTORY: 1962 Code Section 16-353; 1952 Code Section 16-353; 1942 Code Section 1160; 1932 Code Section 1160; Cr. C. '22 Section 53; Cr. C. '12 Section 203; Cr. C. '02 Section 154; G. S. 2498; R. S. 160; 1866 (13) 407; 1887 (19) 820; 1964 (53) 1725; 1981 Act No. 76, Section 4; 1993 Act No. 171, Section 5; 1993 Act No. 184, Section 107; 2010 Act No. 273, Section 16.E, eff June 2, 2010.

STATE OF NEW YORK

EXECUTIVE CHAMBER

ALBANY 12224

January 15, 2013

Mr. Edward Webber
Commissioner
Suffolk County Police Department
30 Yaphank Avenue
Yaphank, New York 11980

Attention: **Michael Blakey**
Assistant District Attorney
Appeals Bureau
Office of the District Attorney

Dear Mr. Blakey:

I have enclosed Governor Cuomo's Executive Warrant & Agent Authorization and supporting documents authorizing the return of **LARRY WAYNE BARNETT, AKA HOWARD GLENN BLAKE** to the State of **South Carolina.**

When the subject is available for delivery to the agent(s) of the demanding jurisdiction, please notify **William R. Byers, Jr. Director, SC Department of Corrections, P.O. Box 21787, Columbia, South Carolina 29221, (803) 896-8555.**

If there are criminal charges pending against the subject which could result in his/her commitment to the NYS Department of Corrections and Community Supervision, please do not execute the enclosed Governor's Warrant - it should be held in abeyance until the charges are resolved. If the charges result in a DOCCS sentence, please return the enclosed paperwork to me at the above address.

If the charges result in an acquittal or dismissal, the Governor's Warrant should be executed at that time.

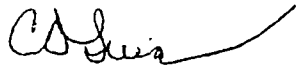
If the accused is only subject to misdemeanor charges, and is subsequently convicted, the Governor's Warrant should be executed upon satisfaction of sentence.

If court proceedings of habeas corpus delay action in this case, please furnish this office with immediate notice and periodic status reports.

After the accused has been transferred to the other jurisdiction, please ensure the Governor's Warrant, supporting papers and a brief report on the disposition of the case are returned to me at the above address.

Thank you for your cooperation and assistance in this matter. If you should have any questions, please contact me at (518) 457-0422.

Very truly yours,



Carol D. Swan
Extradition Specialist

Governor's Extradition Office
State of New York
Department of Corrections and Community Supervision
1220 Washington Avenue, Building 2, Room 315
Albany, New York 12226-2050
(518) 457-0422
Fax: (518) 485-2381
carol.swan@doccs.ny.gov

Rendition of Larry Wayne Barnett
Enclosure/Via FedEx Priority Express Mail

Internet/cc: Lt. Ben Moore
State Law Enforcement Department
on behalf of the Extradition Coordinator
Office of the Governor
State of South Carolina

STATE OF NEW YORK

EXECUTIVE CHAMBER

ALBANY 12224

The Governor of the State of New York

TO THE COMMISSIONER OF POLICE FOR THE COUNTY OF SUFFOLK, YAPHANK, NEW YORK

And any other police officer in the State of New York:

It having been represented to me, **ANDREW M. CUOMO**, Governor of the State of New York, by the Governor of the State of **South Carolina** that

LARRY WAYNE BARNETT, AKA HOWARD GLENN BLAKE

is a fugitive from justice and stands convicted in that State of the crimes of **Grand Larceny** and **Forgery (Six Counts),** which the said Governor certifies to be a crime under the Laws of said State, and that the accused was present in said State at the time of the commission of the crimes, was sentenced to confinement, and fled therefrom and has taken refuge in the State of New York, and is wanted for **service of the remainder of his sentence.**

The said Governor of the demanding State having, pursuant to the provisions of the Constitution, the Laws of the United States and the Laws of said State, demanded that I, **ANDREW M. CUOMO,** Governor of the State of New York, cause the said accused to be arrested and delivered to **KAREN HAIR, CLAY CONYERS AND OTHER DULY DESIGNATED AGENT(S)** of the **South Carolina Department of Corrections, Columbia, South Carolina,** duly authorized to receive, take into custody and convey the said accused back to the said demanding State, which said demand is accompanied by **Judgments and Sentences** and **Affidavit of Remaining Sentence to be Served,** duly certified by the Governor of the demanding State to be authentic and duly authenticated, and charging the said accused with having been convicted of the said crimes in the said demanding State, having been sentenced to confinement and having fled therefrom and taken refuge in the State of New York, and is wanted for service of the remainder of his sentence.

You are hereby required to arrest and secure the said accused wherever the said accused may be found within this State and after compliance with the requirements of the Uniform Criminal Extradition Act of the State of New York, to deliver the said accused into the custody of the said agent(s) to be taken back to the demanding State, pursuant to the said requisition; and also to return this warrant, including a record of all the proceedings had hereunder, and all of the facts and circumstances relating thereto, to the Executive Chamber within thirty days from the date of final action hereon in said State.

Given under my hand and the Privy Seal of the State, at the Capitol in the City of Albany, this 15th day of January in the year two thousand thirteen.

Governor

Acting Extradition Secretary

EXECUTIVE WARRANT

STATE OF NEW YORK

COUNTY OF _____

I, _____,

the peace officer entrusted with the execution of this warrant, do hereby make the following return:

I received this warrant on _____.

I arrested the fugitive or defendant named in the warrant on _____.

Thereafter, said fugitive or defendant was informed by the Supreme or County Court of his/her rights in accordance with the Uniform Criminal Extradition Act and New York Criminal Procedure Law § 570 and his/her rendition was ordered by the Court pursuant to this warrant.

Date: _____

Signature of Officer:

_____

6-24-60-5C (9C-243)

STATE OF

_____

VS.

_____

I, _____,

the agent of the State named in this warrant, do hereby acknowledge the delivery to me of the following fugitive or defendant of said State:

_____.

Date: _____

Signature of Agent:

_____

H

Court of Appeals of New York.
The PEOPLE of the State of New York ex rel. Howard Glenn BLAKE, Alleged to be Larry Wayne Barnett, Appellant,
v.
George E. PATAKI, as Governor of the State of New York, Respondent.

Jan. 12, 2010.

Background: Detainee filed petition for writ of habeas corpus, challenging his detention under warrant for extradition. The Supreme Court, Suffolk County, Arthur G. Pitts, J., granted petition. State appealed. The Supreme Court, Appellate Division, 57 A.D.3d 583, 870 N.Y.S.2d 48, reversed and remitted and reinstated the warrant for extradition. Detainee appealed.

Holding: The Court of Appeals held that detainee was a fugitive.

Affirmed.

West Headnotes

[1] Habeas Corpus 197 ⚿525.1

197 Habeas Corpus
197II Grounds for Relief; Illegality of Restraint
197II(C) Relief Affecting Particular Persons or Proceedings
197k525 Extradition and Detainers
197k525.1 k. In general. Most Cited Cases

Once a governor of an asylum state has granted extradition, a court considering release on habeas corpus must decide: (1) whether the extradition documents on their face are in order; (2) whether the petitioner has been charged with a crime in the demanding state; (3) whether the petitioner is the person named in the request for extradition; and (4) whether the petitioner is a fugitive.

[2] Extradition and Detainers 166 ⚿30

166 Extradition and Detainers
166I Extradition
166I(B) Interstate
166k28 Persons Subject to Extradition
166k30 k. Fugitives from justice. Most Cited Cases

A "fugitive," for purposes of extradition, is one who, having committed a crime in a demanding State, is present in an asylum State when a demanding State seeks to prosecute the offense.

[3] Extradition and Detainers 166 ⚿30

166 Extradition and Detainers
166I Extradition
166I(B) Interstate
166k28 Persons Subject to Extradition
166k30 k. Fugitives from justice. Most Cited Cases

Detainee was a fugitive, and thus subject to extradition to South Carolina; detainee had been convicted of a crime in South Carolina, escaped from incarceration, and South Carolina never granted detainee a pardon.

***283** Harry H. Kuttner, Jr., Mineola, for appellant.

Thomas J. Spota, District Attorney, Riverhead (Michael Blakey of counsel), for respondent.

***913 **869 OPINION OF THE COURT**

MEMORANDUM.

The order of the Appellate Division should be affirmed, without costs. The certified question should not be answered upon the ground that it is unnecessary.

[1][2][3] Once a governor of an asylum state has granted extradition, a court considering release on habeas corpus must decide "(a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive" (*Michigan v. Doran*, 439 U.S. 282, 289, 99 S.Ct. 530, 58 L.Ed.2d 521 [1978]). A fugitive is one who, "having committed a crime in a demanding State, is present in an asylum State when a demanding State seeks to prosecute the offense" ****870***284**(*People ex rel. Strachan v. Colon*, 77 N.Y.2d 499, 502–503, 568 N.Y.S.2d 895, 571 N.E.2d 65 [1991]). Relator 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.

Chief Judge LIPPMAN and Judges CIPARICK, GRAFFEO, READ, SMITH, PIGOTT and JONES concur in memorandum.

On review of submissions pursuant to section 500.11 of the Rules of the Court of Appeals (22 NYCRR 500.11), order affirmed, etc.

N.Y..2010.

END OF DOCUMENT

STATE OF SOUTH CAROINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	
STATE OF SOUTH CAROLINA,	)	Warrant No: D-380027
	)	J-878264
v.	)	75-GS-04-1111
	)	
HOWARD BLAKE, a/k/a Larry Barnett	)	**ORDER**
	)	
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."

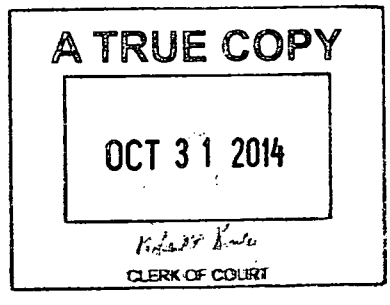
In considering a delay in seeking a fugitive, the Court in In Re McBride, 254 P.2d 117 (1953) explained as follows:

> 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

99 A.D.3d 956

(Cite as: 99 A.D.3d 956, 953 N.Y.S.2d 84)

H

People ex rel. Blake v Pataki
99 A.D.3d 956, 953 N.Y.S.2d 84
NY.2012.

99 A.D.3d 956, 953 N.Y.S.2d 84, 2012 WL 4901091, 2012 N.Y. Slip Op. 06983

The People of the State of New York ex rel. Howard Glenn Blake, Alleged to be Larry W. Barnett, Respondent
v
George E. Pataki, as Governor of the State of New York, Appellant.
Supreme Court, Appellate Division, Second Department, New York

October 17, 2012

CITE TITLE AS: People ex rel. Blake v Pataki

HEADNOTE

Extradition
Sufficiency of Extradition Papers

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael Blakey of counsel), for appellant.
Mark Diamond, New York, N.Y., for respondent.
In a habeas corpus proceeding, the appeal is from a judgment of the Supreme Court, Suffolk County (Pitts, J.), dated August 12, 2010, which, after a hearing, sustained the writ, vacated a Governor's warrant for the extradition of the petitioner to the State of South Carolina, and dismissed the fugitive complaint.

Ordered that the judgment is reversed, on the law, without costs or disbursements, the writ is dismissed, the Governor's warrant for extradition is reinstated, the fugitive complaint is reinstated, and the matter is remitted to the Supreme Court, Suffolk County, for further proceedings in accordance herewith.

On April 8, 1976, an individual using the name Larry Wayne Barnett (hereinafter Barnett) pleaded guilty to forgery in the State of South Carolina, and was sentenced to a term of ***957** imprisonment of seven years. On August 18, 1976, Barnett escaped from custody and fled to New York. In 1993, South Carolina officials prepared extradition papers, but the then-Governor of South Carolina, Carroll A. Campbell, Jr., refused to sign the authorizations necessary to initiate extradition, determining that "exceptional circumstances" weighed against extradition, including Barnett's alleged rehabilitation, long-term marriage, work history, and severe health problems.

No further action was taken by the State of South Carolina to extradite Barnett until October 2005, when an individual using the name Howard Glenn Blake was detained at JFK Airport after a computer entry indicated that he was wanted in South Carolina as Larry Wayne Barnett. On January 9, 2006, the then-Governor of South Carolina, Mark Sanford, signed a demand for the extradition of Barnett, stating that he had been charged in that state with the crime of escape from legal custody. Annexed to the demand was, inter alia, a copy of an affidavit sworn before a judge in South Carolina in 1993, attesting that Barnett had escaped from custody while serving a sentence of imprisonment for the crime of forgery, and a copy of a 1993 warrant for the arrest of Barnett which was issued on that affidavit. On January 12, 2006, then-New York State Governor George E. Pataki signed a warrant for the extradition of "Larry Wayne Barnett, a/k/a Larry Wayne Barnette, a/k/a Larry W. Barnett, a/k/a Larry W. Barnette, a/k/a Wayne Barnette, a/k/a Howard Glenn Blake" ***2** to South Carolina on the charge of escape.

99 A.D.3d 956
(Cite as: 99 A.D.3d 956, 953 N.Y.S.2d 84)

On April 27, 2006, Blake, alleged to be Barnett (hereinafter the petitioner), filed an amended petition for a writ of habeas corpus, seeking to vacate the extradition warrant upon the grounds of, inter alia, waiver, estoppel, and denial of due process. He reserved his right to contest whether he was the person named in the extradition warrant. The Supreme Court, Suffolk County, sustained the writ (*see* *People ex rel. Blake v Pataki*, 13 Misc 3d 247 [2006]), but this Court reversed, reinstated the extradition warrant, and remitted the matter to the Supreme Court for further proceedings (*see* *People ex rel. Blake v Pataki*, 57 AD3d 583 [2008]). This Court granted the petitioner leave to appeal our decision and order to the Court of Appeals, and the Supreme Court stayed further proceedings on the extradition warrant pending determination of that appeal, including a hearing to determine whether the petitioner was, in fact, the person wanted in South Carolina as Larry Wayne Barnett.

On October 2, 2009, while that appeal was pending, New York State officials received a letter from an extradition coordinator in then-Governor Sanford's office notifying them of the "appar ***958** ently inadvertent withdrawal" of the 1993 warrant for the arrest of Barnett. The extradition coordinator annexed a copy of a letter from the Inspector General of the South Carolina Department of Corrections, which stated that his office had discovered that the 1993 warrant had been "erroneously dismissed." The Inspector General stated that "[t]he Department of Corrections had not been aware of this dismissal when it sought to have Barnett extradited to South Carolina. During the entire process that had been undertaken by the authorities of Suffolk County New York, the South Carolina Department of Corrections operated under the good faith [belief] that the 1993 warrant remained valid." The Inspector General stated that, on June 2, 2009, a new warrant had been issued for the arrest of Barnett to replace the 1993 warrant. The extradition coordinator annexed a copy of the warrant dated June 2, 2009, to his letter, and stated that South Carolina was "renew[ing] and affirm[ing]" its earlier demand for the extradition of Barnett.

On January 12, 2010, the Court of Appeals affirmed this Court's decision and order reinstating the extradition warrant (*see* *People ex rel. Blake v Pataki*, 13 NY3d 912 [2009]).

The petitioner then filed a second amended petition for a writ of habeas corpus, seeking to vacate the extradition warrant upon the ground, among others, that it was defective because the 1993 South Carolina warrant was not in effect when the extradition warrant was issued. The Supreme Court sustained the writ. George E. Pataki appeals, and we reverse.

The Extradition Clause of the United States Constitution provides: "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" (US Const, art IV, § 2, cl 2).

In New York, which has enacted the Uniform Criminal Extradition Act, "[n]o demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless . . . accompanied by a copy of an indictment found or by information supported by an affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon, or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole" (CPL 570.08). ***959**

The purpose of the Extradition Clause is to enable

each state to bring offenders quickly to justice by effectively erasing state borders so as to enlarge the territory within which the demanding State may make a lawful arrest, thus precluding any State from becoming a sanctuary for **3 fugitives from the justice of another (*see* *Michigan v Doran*, 439 US 282, 287 [1978]; *Biddinger v Commissioner of Police of City of New York*, 245 US 128, 132-133 [1917]). In order to facilitate this purpose, "extradition proceedings are summary in nature and the statutory provisions are to be liberally construed" (*People ex rel. Kotch v District Attorney of Kings County*, 170 AD2d 632, 633 [1991]).

"It is . . . well established that once the Governor of an asylum State has directed extradition, 'a court considering release as habeas corpus can *do no more than* decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive' " (*People ex rel. Strachan v Colon*, 77 NY2d 499, 502 [1991], quoting *Michigan v Doran*, 439 US at 289; *see* *People ex rel. Angell v Scoradick*, 265 AD2d 354 [1999]).

Here, the extradition documents on their face are in order. Though the 1993 warrant which is part of those documents has been dismissed, the letters stating that it has been dismissed are not part of the extradition documents, so they do not affect the facial sufficiency of those documents. The letters only affect the second prong of the analysis, whether the petitioner has been charged with a crime in the demanding state. We are satisfied that he has, despite the fact that the 1993 warrant for his arrest has been dismissed. The extradition documents include a copy of Barnett's indictment for the crime of forgery, a copy of his signed plea of guilty to that charge, a copy of a document, signed by the sentencing judge, showing that he was sentenced for that crime to a term of imprisonment of seven years, and a copy of an affidavit sworn before a judge attesting that he escaped from custody while serving that sentence. The fact that the warrant issued on the basis of that affidavit may have been dismissed is immaterial, since a plain reading of CPL 570.08 demonstrates that the documents required to accompany a demand for extradition are described in the disjunctive, and the extradition documents here clearly show that Barnett has been charged with the crime of escape in South Carolina. This is particularly the case since South Carolina extradition officials state that they are still seeking Barnett's extradition.

In addition, "[w]here extradition is sought based upon an **960 escape from confinement, the demand need only be accompanied by a copy of the sentence together with a statement by the executive authority of the demanding State that the person claimed has escaped from confinement (CPL 570.08)" (*People ex rel. Perry v Flynn*, 59 AD2d 591, 591 [1977]). Here, the extradition documents, liberally construed, also show that Barnett is being sought based upon an escape from confinement. These papers, together with the statement in then-Governor Sanford's extradition demand that Barnett had escaped from legal custody, are sufficient to support the extradition warrant (*see* *People ex rel. Perry v Flynn*, 59 AD2d 591 [1977]; *see also* *Hall v Cronin*, 196 Colo 333, 335, 585 P2d 286, 288 [1978] [construing "form of demand" section of Colorado's version of the Uniform Criminal Extradition Act which is identical to CPL 570.08 and reasoning, "We hold that a requisition by a Governor may refer to, annex and authenticate accompanying papers . . . if together they meet statutory requirements"]).

The petitioner's remaining contentions are without merit.

However, the question of whether the petitioner is the person named in the request for extradition must be determined at a fact-finding hearing (*see* *People v Miller*, 74 Misc 2d 806 [1973]). Accordingly, we remit the matter to the Supreme Court, Suffolk County, for a hearing on that question. Angiolillo,

99 A.D.3d 956

(Cite as: 99 A.D.3d 956, 953 N.Y.S.2d 84)

J.P., Dickerson, Belen and Miller, JJ., concur.

People ex rel. Blake v Pataki
99 A.D.3d 956, 953 N.Y.S.2d 846022012 WL 49010919992012 N.Y. Slip Op. 069834603, 953 N.Y.S.2d 846022012 WL 49010919992012 N.Y. Slip Op. 069834603, 953 N.Y.S.2d 846022012 WL 49010919992012 N.Y. Slip Op. 069834603

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DATE 7/17/14

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Argued - June 9, 2014

MARK C. DILLON, J.P.
L. PRISCILLA HALL
ROBERT J. MILLER
SYLVIA O. HINDS-RADIX, JJ.

2013-05981
2013-11034

DECISION & ORDER

The People, etc., ex rel. Lu Anne Blake, on behalf of Howard Blake, alleged to be Larry W. Barnett, respondent, v Charles Ewald, etc., appellant.

(Index No. 2346/13)

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael Blakey of counsel), for appellant.

Cartier, Bernstein, Auerbach & Dazzo, P.C., Patchogue, N.Y. (George Dazzo of counsel), for respondent.

In a habeas corpus proceeding, the appeals are (1) from a judgment of the Supreme Court, Suffolk County (Pitts, J.), dated April 18, 2013, which sustained the writ, vacated a Governor's warrant for the extradition of Howard Blake, alleged to be Larry W. Barnett, to the State of South Carolina, and dismissed the fugitive complaint, and (2), as limited by the appellant's brief, from so much of an order of the same court dated September 9, 2013, as, upon reargument and renewal, adhered to the prior determination in the judgment dated April 18, 2013.

ORDERED that the appeal from the order is dismissed as academic, without costs or disbursements, in light of the determination of the appeal from the judgment (*see New York & Presbyt. Hosp. v AIU Ins. Co.*, 20 AD3d 515); and it is further,

ORDERED that the judgment is reversed, on the law, without costs or disbursements, the writ is dismissed, the Governor's warrant for extradition is reinstated, and the fugitive complaint

is reinstated.

"[O]nce the Governor of an asylum State has directed extradition, 'a court considering release on habeas corpus *can do no more than* decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive'" (*People ex rel. Strachan v Colon,* 77 NY2d 499, 502, quoting *Michigan v Doran,* 439 US 282, 289; *see People ex rel. Blake v Pataki,* 99 AD3d 956; *People ex rel. Angell v Scoralick,* 265 AD2d 354). Here, it is undisputed that the documents for extradition to South Carolina are facially sufficient and meet all of the requirements of a proper demand for extradition (*see* CPL 570.08). Instead, the petitioner contends that the detention is illegal because a South Carolina court had issued a limited stay in the proceeding commenced there to challenge the extradition. Contrary to the Supreme Court's determination, such argument should be raised in the South Carolina forum (*see People ex rel. Blake v Pataki,* 13 NY3d 912; *People ex rel. Strachan v Colon,* 77 NY2d at 502-503; *People ex rel. Schank v Gerace,* 231 AD2d 380, 386).

In light of our determination, we need not address the parties' remaining contentions.

DILLON, J.P., HALL, MILLER and HINDS-RADIX, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
NOV 21 2014
SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

Appellate Case No. 2014-002427

THE STATE .....RESPONDENT

v.

HOWARD BLAKE A/K/A LARRY BARNETT .....APPELLANT.

PROOF OF SERVICE

I, Mary Frances Jowers, hereby certify that I have served the within REQUEST FOR EXPEDITED REVIEW, MOTION TO DISMISS, AND RETURN TO MOTION FOR STAY PENDING RESOLUTION OF APPEAL on Appellant on November 21, 2014 by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Jack B. Swerling, Esq.
1720 Main Street, Suite 301
Columbia, SC 29201

Mary Frances Jowers

Mary Frances Jowers
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3996

ALAN WILSON
ATTORNEY GENERAL

November 21, 2014

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: The State v. Howard Blake
Appellate Case No. 2014-002427

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Request for Expedited Review, Motion to Dismiss, and Return to Motion for Stay Pending Resolution of Appeal, along with the Certificate of Service in the above-captioned matter for filing in your office. By copy of this letter, I am serving opposing counsel with same.

As I stated in the Motion, the Defendant is in custody in New York pursuant to a New York Governor's Warrant. The State of South Carolina asks that the Court take action on this Motion as soon as possible so that the State can make any needed travel arrangements for the return of Barnett.

If you have any questions, please do not hesitate to contact me. My direct line is 734-3996, and my cell phone is 917-4893.

Sincerely,

Mary Frances Jowers

Mary Frances Jowers
Assistant Deputy Attorney General

Enclosure
cc:
Jack Swerling, Esq.