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MAR 17 1977

No. 27295

Flourence Walsh

IN THE SUPREME COURT OF THE STATE OF COLORADO

DAMON CHRISTOPHER,]	Appeal from the District
]	Court of the City and
Petitioner-Appellant,]	County of Denver
]	and State of Colorado
]	
vs.]	
]	
]	
DAN CRONIN, Manager of Safety and]	
Excise, WAYNE K. PATTERSON, Warden]	
of the Jail, City and County of Denver,]	
State of Colorado,]	
]	Honorable
]	JOSEPH R. QUINN
Respondents-Appellees.]	Judge

BRIEF OF PETITIONER-APPELLANT

ROLLIE R. ROGERS
Colorado State Public Defender

JAMES F. DUMAS, Jr.
Chief Deputy State Public Defender

NANCY E. RICE
Deputy State Public Defender

ATTORNEYS FOR PETITIONER-
APPELLANT
1575 Sherman Street
Denver, Colorado 80203
892-2665

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State of Colorado,]	
]	Honorable
]	JOSEPH R. QUINN
Respondents-Appellees]	Judge

BRIEF OF PETITIONER-APPELLANT

Petitioner-Appellant was the defendant in the trial court and will be referred to by name or as Defendant. Respondents-Appellees will be referred to as the People or the State. Numbers in parenthesis refer to folio numbers of the original record.

STATEMENT OF THE ISSUE PRESENTED

1. Whether the Court erred in denying the Petitioner-Appellant's Petition for a Writ of Habeas Corpus in that the extradition papers do not substantiate the fact that probable cause was found in the demanding state.

STATEMENT OF THE CASE

On December 9, 1975, an information alleging that Ira Woodrow Wilson a/k/a Damon Christopher was a fugitive from justice under C.R.S. 1973, section 16-19-103 was filed in the Denver District Court.(1) Petitioner-Appellant was arrested, arraigned and plead not guilty to the fugitive charges.(7, 8) He was given bail in the amount of a 10% cash bond on \$10,000.00 with condition that the surety possess real

property in the State of Colorado.(8) California, the demanding State, then commenced extradition proceedings. The requisition papers included the following;

(1) Information No. A-130573 filed in Los Angeles County Superior Court, and alleging four counts of forgery and two counts of grand theft.(46-57) On November 12, 1974, the Petitioner-Appellant was arraigned on these charges and the plea was continued to November 26, 1974. Bail was set.(58-59) The Petitioner-Appellant failed to appear for pre-trial hearing, and on September 11, 1975, a bench warrant was issued for his arrest.(61, 92)

(2) Information No. A-131786 filed in Los Angeles County Superior Court and alleging three counts of grand theft, two counts of forgery and one count of attempted grand theft.(62-73) On April 8, 1975, the Petitioner-Appellant was arraigned and the plea was continued until April 15, 1975. Bail was set.(74,75) On September 11, 1975, after the Petitioner-Appellant failed to appear for a pre-trial hearing, a bench warrant was issued.(76, 92)

(3) Information No. A-132024 filed in Los Angeles County Superior Court and alleging one count of grand theft and two counts of forgery.(80-84) On April 8, 1975, Petitioner-Appellant was arraigned and the plea was continued.(88) On September 11, 1975, the Petitioner-Appellant failed to appear for a pre-trial hearing and a bench warrant was issued.(91, 92)

The informations and the bench warrant were duly authenticated by Jack E. Goertzen, Judge of the Superior Court of the State of California for the County of Los Angeles.(94, 20)

Additional requisition documents filed by the State of California include:

(1) A certification of probable cause finding as to the informations filed by the demanding state.(21) In the certification, Gregory W. Baugher, a Deputy Attorney General of the State of California certified that California law, as a prerequisite to the filing of an information, requires that probable cause be found to bind the defendant over for trial.(22) According to the certification, in case No. 130573, Defendant was bound over after a preliminary examination in October, 1974. In case No. 131786, Defendant was bound over after a preliminary examination on or about March 24, 1974. And in case No. 132024, Defendant was bound over after a

preliminary examination on or about March 23, 1975.(23) Accordingly Mr. Baugher certifies that, despite the absence of minute orders or other judicial order declaring that probable cause has been found, the existence of the filed information is evidence of such finding.

(2) An application for requisition (27) certified and signed by the District Attorney of Los Angeles County, State of California.(38) The application certified that the Petitioner-Appellant was personally present at the time of the alleged offenses and in order to avoid prosecution, fled from the State of California.(29) Also included with the application was a brief statement of the factual basis for each information and a copy of the California Penal Statutes which define the Petitioner-Appellant's alleged offenses as crimes under California law.(31-36) The application included an affidavit filed by Jack Morgan, a Deputy Sheriff of Los Angeles County, State of California.(42) In his affidavit, Jack Morgan swore that the above-referenced informations were filed, that Petitioner-Appellant was arraigned, that he failed to appear for trial, and that a bench warrant covering all three informations was issued. Morgan identified a picture submitted with the application as being that of Ira Woodrow Wilson a/k/a/ Damon Christopher.(45) Finally, Jack Morgan swore that the Petitioner-Appellant was a fugitive from justice(44)

On April 21, 1976, the California Governor's Warrant was filed in Denver District Court. The Petitioner-Appellant was given time to file a petition for a Writ of Habeas Corpus (97) which petition was subsequently filed.(101-105) On May 26, 1976, the District Court ordered that the District Attorney appear and show cause why the Petitioner-Appellant was being held in custody and further, why the fugitive action filed against him was sufficient.(107)

After a hearing, the Court held that the Petition for a Writ of Habeas Corpus was denied and remanded the Petitioner-Appellant to the custody of the authorities from the demanding State of California.(114)

A pro se Notice of Appeal was filed June 3, 1976 and the Office of the Public Defender was subsequently appointed to handle the appeal.(118)

ARGUMENT

THE COURT ERRED IN DENYING THE PETITIONER-APPELLANT'S PETITION FOR A WRIT OF HABEAS CORPUS IN THAT THE EXTRADITION PAPERS DO NOT SUBSTANTIATE THE FACT THAT PROBABLE CAUSE WAS FOUND IN THE DEMANDING STATE.

It is settled law in this jurisdiction that in extradition cases the requisition papers submitted by the demanding state must demonstrate the existence of probable cause. See, e. g., Pippin v. Leach, ___ Colo. ___, 534 P.2d 1193 (1975); People v. McFall, 175 Colo. 151, 486 P.2d 6 (1971)

. . . [P]robable cause must be established by the extradition documents if extradition is to occur, and nothing short of probable cause will suffice.

Pippin v. Leach, supra, 534 P.2d at 1195.

Pippin also discusses the effect a preliminary hearing for the purpose of finding probable cause held in the demanding state will have on Colorado's assessment of the requisition papers, stating:

If a preliminary hearing was held in the demanding state and probable cause was established, then the hearing would be equivalent to an indictment and would consequently relieve the courts of this state of the burden and necessity of assessing the requisition documents to determine whether probable cause is established. If the requisition documents substantiate the fact that probable cause was determined in the demanding state, then, in the absence of other defects, extradition should occur. (emphasis added)

Pippin v. Leach, supra, 534 P.2d at 1196.

Petitioner-Appellant maintains that while the requisition papers at least superficially establish that a preliminary hearing did take place, there is nothing in the record which substantiates the fact that probable cause was determined at the preliminary hearing. For this reason, the requisition papers are insufficient.

Commencing at folio 21, a document entitled "Certification of Probable Cause Finding In The Matter of the Extradition of Ira Woodrow Wilson, a/k/a Jack. B. Phillips. a/k/a Christopher Damon" can be found. In this document, Gregory W. Baugher, a Deputy Attorney General for the State of California certifies that, although the requisition papers do not include a minute order or other judicial order

declaring that probable cause has been found to bind over the PetitionerAppellant for trial, California law requires that a probable cause finding be made before an information may be filed in the Superior Court and therefore the filing of an information is per se evidence that a finding of probable cause has been made. Mr. Baugher further says that he checked into the matter and can certify that in Case No. 132024, Petitioner was bound over after a preliminary examination on or about March 23, 1975; that in Case No. 130573, Petitioner was bound over after a preliminary examination in October, 1974; and that in Case No. 131786 Petitioner was bound over after a preliminary examination on or about March 24, 1974.

It is apparent from Mr. Baugher's certification that he was unable to ascertain with any specificity exactly when the Petitioner-Appellant was bound over. In Case No. 130573, Mr. Baugher is able to certify only that he thinks the Petitioner was bound over sometime during the month of October.

Pippin, supra, requires that the requisition documents substantiate the fact that probable cause was determined. Such an uncertain and imprecise documentation as that submitted by Mr. Baugher does not meet that standard, especially in light of California Penal Code Section 872 (folio 24) which provides:

If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must make or endorse on the complaint an order signed by him, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within A.B. guilty thereof, I order that he be held to answer to the same.

Had the authorities of the State of California wanted to clearly and precisely substantiate the fact that probable cause had been determined, they could have and should have submitted the magistrate's endorsement on the complaint indicating that probable cause had been found to bind over the Petitioner. The requisition papers submitted did not include these documents and thus were insufficient to substantiate the fact that probable cause was determined. An imprecise, nonspecific certification such as the one submitted does not meet the Pippin test and thus the requisition papers should be held to be insufficient.

In addition to the Certification by Gregory Baugher, the requisition papers include an affidavit sworn out by Jack P. Morgan, a Deputy Sheriff of Los Angeles County, State of California.(42) This affidavit does not even discuss the preliminary hearings wherein probable cause was allegedly found and cannot be said to substantiate, in any way, the fact that probable cause was determined. In addition, the affidavit is conclusory in nature and does not state the basis by which the affiant gained his information.

CONCLUSION

The requisition papers submitted by the State of California are insufficient in that they do not substantiate the fact that probable cause was determined in the demanding state at a preliminary hearing, as required by Pippin v. Leach, supra. The proper remedy in the case at bar is an order discharging Petitioner from custody. The right to correct defective documents has been afforded to the demanding state when the accused is not unduly prejudiced by the delay. See Pippin v. Leach, supra. In Pippin, for example, the demanding state was given fifteen additional days to correct the papers in light of the fact that the petitioner was awaiting trial on Colorado charges. By contrast in the instant case, Petitioner faces no Colorado charges and is being held in the Denver County Jail on the extradition charges alone. Therefore, Petitioner-Appellant would be unduly prejudiced by an order allowing California time to correct its documents.

Respectfully submitted,

Nancy E. Rice
NANCY E. RICE
Deputy State Public Defender
Attorney for Petitioner-Appellant
1575 Sherman Street
Denver, Colorado 80203
892-2665

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Brief of Petitioner-Appellant was duly served upon the Honorable John D. MacFarlane, Attorney General of the State of Colorado, and J. Stephen Phillips, Assistant Attorney General, by interdepartmental mail, this 17th day of March, 1977.

L. Esperanza