6-6-1976

Allen v. Evans

No. 27152

IN THE SUPREME COURT OF THE STATE OF COLORADO

GARY GENE ALLEN, Petitioner-Appellant, vs. DONALD EVANS, Superintendent of the Colorado State Penitentiary, Respondent-Appellee.	Appeal from the District Court of Fremont County and State of Colorado Honorable MAX C. WILSON Judge

BRIEF OF PETITIONER-APPELLANT

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BRIEF OF PETITIONER-APPELLANT

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

ISSUE PRESENTED

Whether the trial court erred in denying Petitioner's complaint seeking an injunction and in ruling that the hearing previously held pursuant to the Petitioner's petition for writ of habeas corpus subsequent to Idaho's attempt to extradite him was res judicata as to any issues that might be raised in challenge to Idaho's present efforts to obtain custody over the Petitioner pursuant to the Agreement on Detainers?

STATEMENT OF THE CASE

On February 5, 1976, Petitioner filed a complaint in the Fremont County District Court praying for a temporary

order pursuant to Rule 65(b) of the Colorado Rules of Civil Procedure restraining the superintendent of the Colorado State Penitentiary from releasing Petitioner to the custody of certain officials of the State of Idaho.(6-12) The Petitioner alleged that the State of Idaho was seeking to obtain custody over him pursuant to the Agreement on Detainers and that he had not yet been granted a hearing to contest the legality of the transfer pursuant to the interstate compact. The district court issued the temporary restraining order that same day.(13-16)

On February 6, 1976, a hearing was held upon the complaint of the Petitioner seeking an injunction prohibiting the Respondent from releasing the Petitioner to the custody of the Idaho officials. The court ruled that since the Petitioner had been provided a hearing pursuant to a petition for writ of habeas corpus filed after Idaho attempted to extradite him, the Petitioner was not entitled to another hearing to contest his release to the jurisdiction of Idaho, even though that state now sought custody of the Petitioner pursuant to the Agreement on Detainers.(21) The court denied the injunction and ordered the temporary restraining order dissolved. However, the court stayed the dissolution of the temporary restraining order in the event that the Petitioner appealed the court's order within ten days.(22)

On February 11, 1976, the Petitioner filed his Notice of Appeal, duly perfecting this appeal.(33-34) Pursuant to the Petitioner's affidavit of indigency, the Colorado State Public Defender was appointed to represent the Petitioner on his appeal.(29-32, 41-42)

STATEMENT OF THE FACTS

In December of 1974, the State of Idaho sought to extradite the Petitioner, pursuant to the Uniform Criminal Extradition Act, to stand trial on charges pending there against him. The Petitioner filed a petition for writ of habeas corpus in the Denver District Court. The trial court denied the petition, and Petitioner perfected an appeal to this Court.(9) On December 1, 1975, this Court affirmed the trial court's denial of the petition for writ of habeas corpus.(9) See Allen v. Cronin, ___ Colo. ___, 543 P.2d 707 (1975). Prior to the time this Court's decision became final, the Petitioner was convicted on the charge of aggravated robbery in the Denver District Court and sentenced to the Colorado State Penitentiary to serve a term of from seven and one-half years to fifteen years.(10)

Due to the fact that the Petitioner was in the custody of the Department of Institutions, the Idaho authorities sought to obtain custody over the Petitioner pursuant to the Agreement on Detainers. The Petitioner was notified of these events and advised of his rights on February 4, 1976.(11) However, the Petitioner learned, on February 5, 1976, that officials from Idaho would transport him to that state the following day.(8) Consequently, on February 5th, the Petitioner sought a temporary restraining order to halt his removal to the State of Idaho. The District Court for Fremont County issued the restraining order that same day.(13-16)

A hearing was held on February 6, 1976, at which the Petitioner sought an injunction prohibiting his removal to the State of Idaho until such time as he was provided a

hearing to contest the legality of his transfer under the Agreement on Detainers. It was conceded by all parties that the Petitioner previously had been afforded a hearing to attack his transfer under the Extradition Act and that Idaho now sought custody of the Petitioner under the Agreement on Detainers. The trial court held that the Petitioner was not entitled to a hearing to attack the sufficiency of the new papers and that the previous rulings of the Denver District Court and this Court were res judicata as to any issues that might be raised by the Petitioner.(21, 50) From that ruling of the trial court, the Petitioner brings this appeal.

ARGUMENT

THE TRIAL COURT ERRED IN RULING THAT THE HEARING PREVIOUSLY HELD PURSUANT TO THE PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS SUBSEQUENT TO IDAHO'S ATTEMPT TO EXTRADITE HIM WAS RES JUDICATA AS TO ANY ISSUES THAT MIGHT BE RAISED IN CHALLENGE TO IDAHO'S PRESENT EFFORTS TO OBTAIN CUSTODY OVER THE PETITIONER PURSUANT TO THE AGREEMENT ON DETAINERS. THUS, THE COURT ERRED IN DENYING THE PETITIONER'S COMPLAINT SEEKING AN INJUNCTION UNTIL SUCH TIME THAT HE COULD BE AFFORDED THE REQUIRED HEARING TO TEST IDAHO'S COMPLIANCE WITH THE AGREEMENT ON DETAINERS.

Idaho seeks to obtain custody over the Petitioner pursuant to the Agreement on Detainers, C.R.S. 1973, 24-60-501. The Petitioner requested a hearing to test the legality of his transfer under this interstate compact. The District Court for Fremont County ruled that the Petitioner was not entitled to the requested hearing since he had previously been provided a hearing to contest Idaho's attempt to have

him returned to that state as a fugitive from justice under the Uniform Criminal Extradition Act, C.R.S. 1973, 16-19-101 and 16-19-104 (hereinafter Extradition Act). The court's ruling was in error and its judgment must be reversed and the cause remanded for a hearing.

This Court recently held in Moen v. Wilson, ___ Colo. ___, 536 P.2d 1129 (1975), that a Colorado prisoner has the right to a hearing to contest his transfer to another state under the Agreement on Detainers. Upholding the constitutionality of that interstate compact, this Court ruled that the right to a hearing provided under the Extradition Act must be read into the Agreement on Detainers. Said the Court:

> Prospectively, and not retroactively, a prisoner will have the right to challenge the procedures to determine whether the interstate compact and the Uniform Mandatory Disposition of Detainers Act (C.R.S 1963, 39-23-8) [now C.R.S. 1973, 16-14-101] have been complied with. A prisoner will also be able to contest the transfer on the grounds afforded to those that are to be transferred pursuant to the Extradition Act. 536 P.2d supra, at 1133.

The general rule that a prisoner has the right to a hearing to test a receiving state's compliance with the Agreement in Detainers is not at issue in the instant case. Indeed, at the hearing held pursuant to the Petitioner's complaint for an injunction, the trial court acknowledged that Moen v. Wilson, supra, had established the right to a hearing. (48) However, the court held that the Petitioner in the instant case was not entitled to such a hearing since he had previously been provided a hearing to contest his transfer to Idaho under the Extradition Act.(49) The court specifically based its holding on the doctrine of res judicata,

stating that the extradition proceedings involved the "same situation" as did the instant proceedings under the Agreement on Detainers.(49) It is in this ruling that the trial court erred.

The doctrine of res judicata "has but limited application in extradition proceedings." Boyd v. Van Cleave, 180 Colo. 403, 505 P.2d 1305 (1973). Res judicata bars a subsequent proceeding only if the facts and issues are identical to those presented in the first proceeding. See Seigler v. Canterbury, 136 Colo. 413, 318 P.2d 219 (1957). But if "the facts and the issues, as here, are different from those raised in the first petition, the court is not precluded from reaching a different conclusion than it did on the initial petition for a writ of habeas corpus." Boyd v. Van Cleave, supra, 505 P.2d at 1307.

Under these general principles of law, it is clear that res judicata is not properly applied in the instant case. It is, of course, conceded that the Petitioner was afforded a hearing in February of 1975 pursuant to his petition for writ of habeas corpus. That petition was filed to contest Idaho's attempt to extradite the Petitioner under the Extradition Act as a fugitive from justice. At that hearing and in the subsequent appeal, the Petitioner alleged that the affidavit accompanying the requisition documents failed to establish probable cause that the Petitioner committed the offenses alleged and that there was insufficient evidence presented to show that he was in the State of Idaho at the time the crimes were allegedly committed. See Allen v. Cronin, ___ Colo. ___, 543 P.2d 707 (1975). Before the decision of this Court affirming the trial court's denial of the writ became final,

the Petitioner was convicted of the offense of aggravated robbery and sentenced to the Colorado State Penitentiary. Idaho then renewed its attempt to transfer the Petitioner to that state, this time proceeding under the Agreement on Detainers. Petitioner submits that the issues that could be raised to contest his transfer under the Agreement on Detainers are not the same as those raised at the first hearing. Thus, the first hearing is not res judicata as to the instant situation and the trial court erred in ruling to the contrary.

Closely on point to the instant situation is Boyd v. Van Cleave, supra. In that case, an initial hearing was held to contest the extradition of the petitioner to Kansas as a fugitive from justice. After the court granted the writ of habeas corpus, Kansas again attempted to extradite the petitioner, this time as a non-fugitive. This Court held that the result of the first hearing did not constitute res judicata as to the subsequent attempt to extradite the petitioner since the demanding state was proceeding under a different section of the Extradition Act and different issues were raised in this second proceeding. See also, Tucker v. Shoemaker, ___ Colo. ___, 546 P.2d 951 (1976). Here, of course, Idaho is presently proceeding under the Agreement on Detainers after initially seeking custody of the Petitioner pursuant to the Extradition Act.

As stated above, Moen v. Wilson, supra, recognized that a prisoner on whom a detainer has been filed not only has the right to contest his transfer on the grounds afforded under the Extradition Act, but also has the right to test the receiving state's compliance with the Agreement on Detainers

and the Uniform Mandatory Disposition of Detainers Act. The Petitioner has never been afforded this opportunity to test the sufficiency of the detainer papers. Thus, in no way can it be said that the hearing held to contest extradition is res judicata as to the requested hearing to challenge the detainer documents.

Finally, it should be noted that the papers filed pursuant to the Agreement on Detainers apparently were never presented to the trial court. Thus, when the court held that the issues that "are or could be presented to this Court are identical with those that were already heard and ruled on by the Denver District Court and the Supreme Court of the State of Colorado,"(21) it did so without ever having viewed the papers presented by Idaho. Rather, the court merely had the parties confirm that Idaho was now proceeding under the Agreement on Detainers rather than the Extradition Act.

It is thus clear that the court's holding of res judicata is on its face erroneous, since the Petitioner's requested hearing would have tested Idaho's compliance with the Agreement on Detainers and the Uniform Mandatory Disposition of Detainers Act, issues different than those raised in the Petitioner's initial hearing. Further, there appears no basis in fact on the record for the court's conclusion since the court never had before it the papers submitted by Idaho pursuant to the Agreement on Detainers. The court's judgment must be reversed and the cause remanded for a hearing.

CONCLUSION

For the above-stated reasons, the order of the district court must be reversed and the cause remanded for a hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the attached Brief of Petitioner-Appellant were 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 6th day of July, 1976.