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Anderson v. Cronin

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MAK 29 1979

David W. Bazelon

JACKIE L. ANDERSON,
Petitioner-Appellant,

VS.

**DAN CRONIN, Manager of Safety
and Excise and Ex-Officio Sheriff
of the City & County of Denver,
and WAYNE K. PATTERSON,
Warden of the Jail of the City &
County of Denver and State of
Colorado,**

Respondent-Appellee,

Appeal from the District Court
of the City & County of Denver
and State of Colorado

Honorable
HENRY E. SANTO
Judge

J. GREGORY WALTA
Colorado State Public Defender

ILENE P. BUCHALTER
Deputy State Public Defender

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INDEX

	<u>Page</u>
STATEMENT OF THE ISSUE PRESENTED	1
STATEMENT OF THE CASE	1
ARGUMENT	
THE FAILURE TO SUPPORT THE ALLEGATION OF A PRIOR FELONY CONVICTION WITH A COPY OF THE JUDGMENT RENDERS THE REQUISITION DOCUMENTS INSUFFICIENT	2
CONCLUSION	4
CERTIFICATE OF SERVICE	4

TABLE OF CASES CITED

Bryan v. Conn, 187 Colo. 233, 530 P.2d 1274 (1975)	3
Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963)	3
Byers v. Leach, 187 Colo. 312, 530 P.2d 1276 (1975)	3
Coppinger v. People, 152 Colo. 9, 380 P.2d 19, <u>cert. denied</u> , 375 U.S. 923, 84 S. Ct. 270 (1963)	3
Mathews v. People, 136 Colo. 102, 314 P.2d 906 (1957)	3
Mote v. Koch, 173 Colo. 82, 476 P.2d 255 (1970)	3
Union Pacific Railroad Company v. Public Utilities Commission, 170 Colo. 514, 463 P.2d 294 (1969)	3

TABLE OF STATUTES CITED

Colorado Revised Statutes (1973), Section 16-19-104	2
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No. 79SA105

IN THE SUPREME COURT OF THE STATE OF COLORADO

JACKIE L. ANDERSON,]	Appeal from the District Court
]	of the City & County of Denver
Petitioner-Appellant,]	and State of Colorado
]	
vs.]	
]	
DAN CRONIN, Manager of Safety]	
and Excise and Ex-Officio Sheriff]	
of the City & County of Denver,]	
and WAYNE K. PATTERSON,]	
Warden of the Jail of the City &]	
County of Denver and State of]	
Colorado,]	
]	Honorable
Respondent-Appellee,]	HENRY E. SANTO
		Judge

BRIEF OF PETITIONER-APPELLANT

Petitioner-Appellant was the petitioner in the trial court and will be referred to by name or as Petitioner. Respondent-Appellee 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

Whether the failure to support the allegation of a prior felony conviction with a copy of the judgment renders the requisition documents insufficient?

STATEMENT OF THE CASE

The Petitioner, Jackie L. Anderson, filed an amended petition for writ of habeas corpus in the Denver District Court challenging the sufficiency of an extradition request by the State of Texas (1-3) which was accompanied

by an indictment, warrant, and supporting documents.(14-15) A hearing was held and the petition denied.(72) Mr. Anderson appeals this ruling.(39)

ARGUMENT

THE FAILURE TO SUPPORT THE ALLEGATION OF A PRIOR FELONY CONVICTION WITH A COPY OF THE JUDGMENT RENDERS THE REQUISITION DOCUMENTS INSUFFICIENT.

The requisition of the Governor of Texas states that Mr. Anderson stands charged with the crime of "aggravated robbery by deadly weapon—enhanced/bond forfeiture" in Texas.(14-15) The accompanying indictment charges Mr. Anderson with "aggravated robbery—enhanced", but does not contain any statutory citation for the alleged violation.(29) Moreover, the second paragraph of the indictment states that Mr. Anderson was previously convicted of burglary:

AND THE GRAND JURORS AFORESAID do further present that prior to the commission of the aforesaid offense by the said Jackie Anderson, to-wit: on the 25th day of August, A.D., 1972, in the 108th District Court of Potter County, Texas, in Cause Number 15421 on the docket of said Court, the said Jackie Anderson, under the name of Jackie Anderson, was duly and legally convicted in said last named Court of a felony, to-wit, Burglary, upon an indictment then legally pending in said last named Court and of which said Court had jurisdiction; and said conviction was a final conviction and was a conviction for an offense committed by him, the said Jackie Anderson, prior to the commission of the offense hereinbefore charged against him as set forth in the first paragraph hereof,
(See attached copy of indictment)

However, there is no documentation whatsoever to show this prior conviction.

C.R.S. 1973, 16-19-104 provides as follows:

16-19-104. Form of demand. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 16-19-107, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by 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 thereupon, 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. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, or judgment of conviction or sentence must be authenticated by the executive authority making the demand.(emphasis added)

Although a Governor's warrant is prima facie evidence that the legal requirements of extradition have been complied with, a court has a duty to look behind the Governor's warrant to see whether there has been full compliance with the extradition statutes. Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963); Mote v. Koch, 173 Colo. 82, 476 P.2d 255 (1970).

When construing a statute effect should be given to every word, every phrase, and every sentence of the statute. See, e.g., Union Pacific Railroad Company v. Public Utilities Commission, 170 Colo. 514, 463 P.2d 294 (1969). Moreover, extradition statutes are to be strictly construed. As this Court made clear in Mathews v. People, 136 Colo. 102, 314 P.2d 906 (1957):

Statutes providing for the arrest and extradition of fugitives are in derogation of constitutional guarantees of immunity from arrest and must be strictly construed. Henry v. McArthur, 122 Colo. 474, 223 P.2d 621. 136 Colo. at 106, 314 P.2d at 908. (emphasis in original)


In the instant case, the statute must be read as requiring an authenticated copy of the judgment of conviction for the prior felony conviction alleged in the indictment. See Byers v. Leach, 187 Colo. 312, 530 P.2d 1276 (1975); cf. Coppinger v. People, 152 Colo. 9, 380 P.2d 19, cert. denied, 375 U.S. 923, 84 S. Ct. 270 (1963). As there was no such document to support the charge of aggravated robbery—enhanced, the requisition documents are insufficient.

In Bryan v. Conn, 187 Colo. 233, 530 P.2d 1274, 1275 (1975), the requisition documents were found sufficient because "[c]onsidered together, the documents create no confusion as to the crime which provides the basis for extradition." Such is not the case here. The indictment does not cite any statute nor does it include any documents to support the conclusion that Mr. Anderson is charged with the commission of "aggravated robbery—enhanced".

CONCLUSION

The extradition documents submitted by the State of Texas are not in sufficient compliance with the Colorado statutes. Therefore, it is prayed that the trial court's order denying the writ of habeas corpus be reversed and the Petitioner released from custody.


Respectfully submitted,



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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 29th day of March, 1979.



the Name and by the Authority of the State of Texas:

THE GRAND JURORS for the County of Potter, State aforesaid, duly organized, impaneled and sworn as such at
May Term, A.D., 1975, of the District Court of the 108th Judicial District,
and for said County, upon their oaths in said Court present that JACKIE ANDERSON

hereinafter called defendant on or
at the 19th day of June, A.D., 1975, and anterior to the presentment of

Indictment, in the County of Potter and State of Texas, did then and there knowingly and intentionally while in
e course of committing theft of good and lawful United States currency,
reinafter called the property, from Earl Loughner, with intent to
tain and maintain control of the property, using and exhibiting a deadly
apon, namely a handgun, knowingly and intentionally cause bodily injury
Earl Loughner,

AND THE GRAND JURORS AFORESAID do further present that prior to the
mission of the aforesaid offense by the said Jackie Anderson, to-wit:
the 25th day of August, A. D., 1972, in the 108th District Court of
tter County, Texas, in Cause Number 15421 on the docket of said Court,
e said Jackie Anderson, under the name of Jackie Anderson, was duly
dilegally convicted in said last named Court of a felony, to-wit,
rglary, upon an indictment then legally pending in said last named
urt and of which said Court had jurisdiction; and said conviction was
final conviction and was a conviction for an offense committed by him,
e said Jackie Anderson, prior to the commission of the offense herein-
fore charged against him as set forth in the first paragraph hereof,