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FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

OCT 9 1985

J. Danford, Clerk

SUPREME COURT, STATE OF COLORADO

No. 85SA137

PETITIONER'S OPENING BRIEF

JOHN C. ALLIEY, Petitioner-Appellant

v.

RICHARD D. LAMM, Et al, Respondents-Appellees

Appeal from the District Court of Denver, Courtroom 11
Honorable J. Stephen Phillips, Judge

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COLORADO STATE PUBLIC DEFENDER

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Deputy State Public Defender

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SUPREME COURT, STATE OF COLORADO

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v.

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STATEMENT OF THE CASE

On November 15, 1984, John C. Alliey was charged with being a fugitive from the State of New Mexico. (I, 1,2) He was arrested on November 16, 1984 and first appeared before the court on November 20, 1984, at which time he refused to waive extradition. (I, 3,4; II, 1) The court continued the case until December 18, 1984, for presentation of the Governor's Warrant and supporting documentation. (I, 4; II, 1)

On December 18, 1984, the papers had not arrived. Over Petitioner's objection, the case was again continued until February 1, 1985, even though the People offered no explanation for their failure to proceed in a timely fashion. (I, 6; II, 9,11-12)

On February 1, 1985, the People again requested additional time to file the papers, indicating only that they were in transit. The matter was continued to February 15, 1985. (I, 7; II, 13)

On February 15, 1985, John C. Alliey appeared before the court and acknowledged receipt of the Governor's Warrant on that date. The papers were also presented to the court. His counsel requested time to consider filing a Petition for Writ of Habeas Corpus. The Governor's Warrant was stayed initially until February 20, 1985,

and then until February 22, 1985, at which time the Petition was filed. (I, 8-27; II, 20,31)

In his Petition, Mr. Alliey alleged, inter alia, that the People had not complied with the extradition statute, C.R.S. §16-19-101, et seq. (I, 33)

The Habeas Corpus hearing was held on February 28, 1985. Petitioner argued that there was insufficient evidence that he was the party sought by New Mexico. The People presented testimony of Officer Cantwell of the Albuquerque, New Mexico, police department. She testified (in regard to identification) that a witness had identified a photo as her assailant and that that photo was one of the Petitioner. (II, 34-59)

The court ruled that the extradition documents were sufficient and that identification had been shown. Accordingly, the Petition for Writ of Habeas Corpus was denied. (II, 57,58) The Governor's Warrant was then stayed pending appeal. (II, 59)

Notice of appeal was filed on April 19, 1985. (I, 42)

SUMMARY OF THE ARGUMENT

The trial court abused its discretion in allowing the People more than thirty days in which to secure and serve the Governor's Warrant. The applicable time periods commenced upon Petitioner's arrest and therefore the Governor's Warrant was not served within the ninety day time limit either.

ARGUMENT

C.R.S. §16-19-116 ALLOWS THE PEOPLE AN INITIAL PERIOD OF THIRTY DAYS IN WHICH TO SERVE THE GOVERNOR'S WARRANT IN AN EXTRADITION PROCEEDING ON THE PETITIONER.

Three Colorado cases construe this provision. In Norrod v. Bower, 187 Colo. 421, 532 P.2d 330 (1975), it was assumed that the thirty day period started to run on the date of Appellant's arrest. The Court declined to grant relief to Appellant, however, because he failed to show any prejudice since the Governor's Warrant was issued on the thirtieth day even though that was not known to the trial court at the time of the continuance. Whittington v. Bray, 200 Colo. 17, 612 P.2d 72 (1980), cites Norrod with approval, and also assumed that the thirty day time period commenced upon Appellant's arrest. Finally, and without citing either of the two preceding cases, Schumm v. Nelson, 659 P.2d 1389 (Colo. 1983) indicates in dicta that the applicable time period commences upon the Petitioner's first appearance before the court.

Here the charges were filed against Petitioner on November 15, 1984. He was arrested on November 16, 1984. He first appeared before the court on November 20, 1984. On December 18, 1984, the

People requested a continuance over Petitioner's objection and gave the court no indication as to the reasons for the failure to secure the Governor's Warrant. The matter was continued until February 1, 1985, at which time the papers had still not been filed and the only explanation offered by the People was that they were in transit. The matter was continued until February 15, 1985, at which time the papers were filed and served.

Petitioner notes two defects in these proceedings. First, Petitioner was confined for thirty-two days from the date of his arrest to the December 18th hearing when the People requested the first continuance. Petitioner asserts that since the thirty day time period does commence to run on the date of his arrest, the applicable time limit had expired on December 16, 1984, two days prior to the hearing.

Petitioner further argues that the People twice continued the matter without any showing of good cause on which the court could exercise its discretion. After the first appearance the matter was set some twenty-eight days later on December 18, 1984, which indicates the court was mindful of the thirty-day requirement. On December 18, 1984, the People requested a continuance over the Petitioner's objection without any showing whatsoever of good cause. The court granted this request. The matter next was called up on February 1, 1985, and the People still had not offered an explanation for the delay. Finally, the Petitioner was served with the arrest warrant shortly before his hearing on February 15, 1985, some eighty-seven days after his first appearance and ninety-one days after his arrest.

In order for the court to exercise its discretion in a meaningful way, the People should be required to advise the court in detail of the reasons for the continuances. While it is understood that the court has discretion to order continuances up to ninety days total, Norrod, supra, the court must be given meaningful information upon which to base its decision.

In enacting C.R.S. §16-19-116 and 118, it is clear that the legislature showed its preference for the filing of the papers within the initial thirty days. By routinely granting continuances of up to ninety days, the courts have effectively enlarged the time period to ninety days regardless of the factual setting.

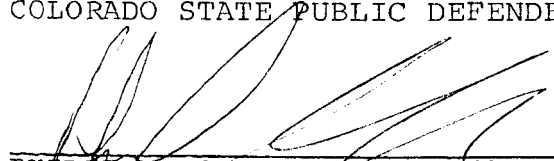
Moreover, assuming that the initial thirty day time period commences upon the arrest of the Petitioner, he was not served the Governor's Papers until ninety-one days after his arrest on November 16, 1984. (The papers were served on February 15, 1985). Thus this matter should have been dismissed as a sanction for the People's failure to comply with the two above-cited statutes.

In anticipation of the People's Answer Brief, Petitioner asserts that this matter was raised at the trial court level. Petitioner raised a timely objection to the first continuance on November 20, 1984. In his Petition for Writ of Habeas Corpus, Petitioner noted, inter alia, that the People had not complied with C.R.S. §16-19-101 et seq. Petitioner further raised the issue of compliance with the ninety day rule in a timely fashion since he could not have raised the issue prior to the expiration of the ninety days.

CONCLUSION

WHEREFORE, Petitioner prays that the judgment of the trial court be reversed and that he be released.

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DATED: October 9, 1985

CERTIFICATE OF SERVICE

I certify that a copy of Petitioner's Opening Brief was served on Duane Woodard, Attorney General, by depositing it in the United States Mail, postage prepaid, addressed to the Office of the Attorney General, 1525 Sherman Street, Denver, Colorado 80203 on October 10, 1985.