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### Alliey v. Lamm

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FILED IN THE  
SUPREME COURT  
OF THE STATE OF COLORADO

SUPREME COURT, STATE OF COLORADO

OCT 28 1985

Case No. 85SA137

Mac V. Danford, Clerk

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ANSWER BRIEF

Appeal from the District Court of Denver County  
Honorable J. STEPHEN PHILLIPS, Judge

-----  
JOHN C. ALLIEY,

Petitioner-Appellant,

v.

J. D. McFARLANE, ET AL.,

Respondents-Appellees.  
-----

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INTRODUCTORY STATEMENT

The People would accept the petitioner's statement of the case as presented, except for the allegation that petitioner was served with the Governor's warrant on February 15, 1985. From the record, (v. 2, p. 21, ll. 1, 15 - 22) it appears that petitioner was served with the Governor's warrant on February 13, 1985.

SUMMARY OF THE ARGUMENT

1. The trial court properly allowed the prosecution a total of 90 days in which to serve the Governor's warrant on petitioner.

## ARGUMENT

### I.

THE TRIAL COURT PROPERLY ALLOWED THE PROSECUTION A TOTAL OF 90 DAYS IN WHICH TO SERVE THE GOVERNOR'S WARRANT ON PETITIONER.

Initially, this court should know that the extradition warrant was served on petitioner on February 13, 1985, not February 15, 1985, thus rendering any argument about the 90 day period totally untenable. Petitioner was arrested November 16, 1984. From November 16, 1984, to February 13, 1985, is a total of 90 days counting both November 16 and February 13.

However, to finally settle this argument, the People ask this court to establish that the period a fugitive may be held pending arrival of the Governor's extradition warrant begins when he/she first appears in court, not on the date of arrest. See Schumm v. Nelson, 659 P.2d 1389 (Colo. 1983).

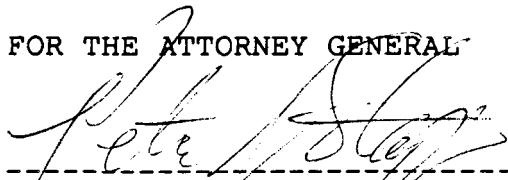
Finally, the petitioner makes the argument that to extend the initial 30 day period granted to the prosecution in section 16-19-116, C.R.S. (1978), the district court must have good cause. This argument is totally without merit. The statute does not require a showing of good cause and never, in Colorado's history, has this court required cause to be shown. Section 16-19-118, C.R.S. (1978) grants the district court the discretion to extend for an additional 60 days the period of time within which the prosecution may file the Governor's warrant. No good cause

is required and it is solely within the district court's discretion.

CONCLUSION

For the foregoing reasons the People respectfully request the district court's denial of petitioner's habeas corpus be affirmed.

FOR THE ATTORNEY GENERAL

  
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Appellate Section

Attorneys for Respondents-Appellees

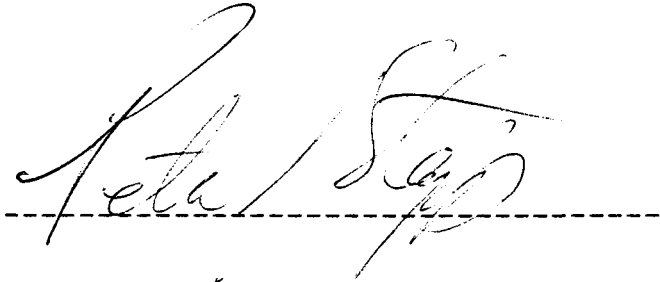
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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within ANSWER BRIEF upon all parties herein by depositing copies of same in the United States mail, postage prepaid, at Denver, Colorado this 28<sup>th</sup> day of October 1985, addressed as follows:

David F. Vela  
Colorado State Public Defender

Philip A. Cherner  
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331 Fourteenth Street  
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A handwritten signature in cursive script, appearing to read "P. A. Cherner", is written over a horizontal dashed line.