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Extradition – Probable Cause – Judges –
Hearings – Escambia County

The court's authority in a hearing on the arrest of a fugitive pending extradition is limited to determining whether the fugitive appears to be charged in the other state, not to reexamining the probable cause finding in the other state.

Dear Mr. Billy:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Once a person is arrested prior to requisition, pursuant to section 15-9-40 of the Code of Alabama, and is brought before the district or circuit judge with probable cause having been established by a judge or magistrate in the demanding state where the crime was committed, is the State of Alabama required to conduct a full preliminary hearing to reestablish probable cause in Alabama for the crime committed in the other state?

FACTS AND ANALYSIS

“Alabama’s version of the Uniform Criminal Extradition Act (UCEA) is found at § 15-9-20 *et seq.*, Code of Alabama 1975. Our legislature first adopted the UCEA, with slight variations, in 1926. *See Krenwinkel v. State*, 45 Ala. App. 474, 232 So.2d 346 (1970).” *Mozingo v. State*, 562 So. 2d 300, 302 (Ala.

Crim. App. 1990). Under the act, “the governor of the state from which the fugitive has fled may issue a written demand, or ‘requisition,’ to the governor of the asylum state to detain the fugitive and deliver [the fugitive] to the demanding state.” *France v. Judd*, 932 So. 2d 1263, 1264 (Fla. Dist. Ct. App. 2006). “[T]he federal statutory and constitutional provisions regulating interstate extradition and habeas corpus are controlling, exclusive of state power. . . . [T]he courts of an asylum state are bound by Article IV, § 2, of the United States Constitution [the Extradition Clause], by 18 U.S.C. § 3182 [the federal extradition statute], and where adopted, the Uniform Criminal Extradition Act.” *Raley v. State*, 455 So. 2d 203, 205 (Ala. Crim. App. 1984).

Sections 15-9-40 and 15-9-41 provide for arrest pending extradition. The former statute provides for issuance of a fugitive from justice warrant. ALA. CODE § 15-9-40 (1995). The latter statute provides for a warrantless arrest. ALA. CODE § 15-9-41 (1995). Both statutes require that the fugitive be brought before a district or circuit court judge on arrest. ALA. CODE § 15-9-40, § 15-9-41 (1995).

Section 15-9-42 requires the judge to perform the following examination:

If, from the examination before the district or circuit court judge, it appears that the person held is the person charged with having committed the crime alleged, that he probably committed the crime and, except in cases arising under Section 15-9-34, that he has fled from justice, the judge must commit him to jail by a warrant reciting the accusation for such a time specified in the warrant as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in Section 15-9-43, or until he shall be legally discharged.

ALA. CODE § 15-9-42 (1995) (emphasis added).

The Alabama Court of Appeals has explained that this section “provides for a *preliminary hearing*. If therefrom the judge finds that (a) the person held is the person charged, (b) he probably committed the crime, and (c) he has fled from justice, then the judge must commit him to jail by a further warrant valid only for a (reasonable) specified time.” *State v. Sparks*, 44 Ala. App. 531, 532, 215 So. 2d 469, 470 (Ala. Ct. App. 1968) (emphasis added).

A defendant in an ordinary criminal proceeding has the right to a preliminary hearing to contest the probable cause supporting the charge against the defendant until an indictment is returned. A. R. CRIM. P. 5. Unlike Rule 5, section 15-9-42 does not specifically provide for witness testimony. Moreover, since *Sparks*, the Alabama Court of Criminal Appeals has emphasized that “[i]nterstate extradition was intended to be a summary and mandatory executive proceeding derived from the [Extradition Clause]. . . . **The clause never contemplated that the asylum state was to conduct the kind of preliminary inquiry traditionally intervening between the initial arrest and trial.**” *Monroe v. State*, 400 So. 2d 753, 756 (Ala. Crim. App. 1981) (quoting *Michigan v. Doran*, 439 U.S. 282, 288 (1978)). See also, *State v. J.M.W.*, 936 So.2d 555 (Ala. Crim. App. 2005); *Harris v. State*, 669 So. 2d 1033 (Ala. Crim. App. 1995). The Court has consistently followed *Doran* in holding that it must be presumed that the determination of probable cause by the courts of the demanding state is correct. See *Harris*; *Cramer v. State*, 480 So. 2d 13 (Ala. Crim. App. 1985); *Raley*; and *Johnson v. State*, 439 So. 2d 1352 (Ala. Crim. App. 1983).

The National Manual on Extradition and Interstate Rendition offers the following guidance on the evidence commonly presented in this type of hearing:

The prosecutor’s burden is simply to establish probable cause on the issues of identity and whether the person is charged or convicted. These facts may be shown in a variety of ways; however, if certified copies of appropriate documents are introduced, they should be accepted as an adequate proof. Witnesses from the demanding state should not be required.

Since only probable cause need be shown, and because this is a very preliminary stage of the criminal proceedings, formal rules of evidence should not apply and the allocation of the burden of proof is similar to what it would be in a habeas corpus challenge to extradition. . . . In fact, at this stage the evidence should be even more liberally construed. . . . All that must be shown is that the person is *probably* charged in the other state.

National Association of Extradition Officials, *National Manual on Extradition and Interstate Rendition* 49 (2009) (emphasis added).

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CONCLUSION

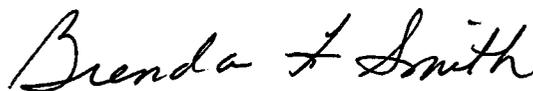
The court's authority in a hearing on the arrest of a fugitive pending extradition is limited to determining whether the fugitive appears to be charged in the other state, not to reexamining the probable cause finding in the other state.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/GWB

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