

IN THE SUPREME COURT OF FLORIDA

FILED
L. WHITE

APR 4 1968

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

CASE NO. 67,747

DREW GALLOWAY, Sheriff of
Holmes County,

::

Petitioner,

::

vs

::

JIMMY JOSEY,

::

Respondent.

::

BRIEF OF RESPONDENT

W. PAUL THOMPSON
Attorney for Respondent
P.O. Drawer 608
DeFuniak Springs, Florida 32433
(904)892-2117

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STATEMENT OF THE CASE

This cause came on before the Court for hearing on Petition for Writ of Habeas Corpus filed by the appellant. A hearing was held on April 17, 1984, based on an Extradition Warrant issued by the Office of the Governor of the State of Florida, alleging that the respondent herein committed the offence of theft of property, second degree, on October 16, 1983, in the City of Headland, County of Henry, State of Alabama, alleging the theft of ten tons of nitrogen fertilizer. (R-10). Respondent's Petition for Writ of Habeas Corpus alleged that he was not present in the State of Alabama at the time of the alleged crime and was therefore not a fugitive from justice. On May 4, 1984, the Circuit Court of Holmes County, Florida, found that no legal reason barred extradition. (R-12) Respondent appealed to the First District Court of Appeal. After initial and supplemental briefs were filed, the First District issued its opinion reversing and remanding to the trial court.

STATEMENT OF THE FACTS

The State of Alabama submitted an Application for Extradition (R-1). After an examination of this Application, the Office of the Governor of the State of Florida issued a Warrant of rendition (R-10). The respondent filed a Petition for Writ of Habeas Corpus, alleging that he was not present in the State of Alabama at the time of the alleged crime. Upon hearing before the Circuit Court of Holmes County, Respondent offered testimony of numerous witnesses as to his presence in Holmes County, Florida, on the date of the alleged crime in Alabama (T-3/18), and one witness from Alabama who was a witness to the crime who alleged that Mr. Josey was not present there. (T-18/20). The only evidence offered by the State was the rendition warrant from the State of Alabama.

ISSUE

THE FIRST DISTRICT COURT OF APPEAL CORRECTLY HELD THAT THE DEMAND FOR EXTRADITION REQUIRED BY SECTION 941.03 CANNOT, STANDING ALONE, BE DEEMED COMPETENT EVIDENCE TO CREATE A CONFLICT ON THE ISSUE OF FUGITIVITY IN A HABEAS CORPUS PROCEEDING CONTESTING EXTRADITION: AND, CORRECTLY DECIDED THAT THE HOLDING OF BRUNELLE V. NORVELL, 433 SO.2D 19 (FLA. 4th DCA, 1983) IS INCONSISTENT WITH THE FUNDAMENTAL RIGHT OF A FUGITIVE TO CHALLENGE THE FACTUAL ISSUE OF FUGITIVITY IN A HABEAS CORPUS PROCEEDING.

ARGUMENT

Counsel for Respondent has researched the cases cited in Petitioner's brief, and found not one single case which states that the documents on which a Warrant in Extradition is based and the Warrant itself constitutes a conclusive case against which there is no defense. Granted, occasionally the rules of evidence seemed strained as in Smith v. State of Idaho, 373 F.2d 149 (9th Cir. 1967), in which the court received six Affidavits and a Deposition. Nothing in that case indicates that using Affidavits was questioned. If the State's position in this matter is upheld, it means simply that there is no defense to extradition, other than patent irregularity or insufficiency of the documentation. The issue of whether or not the accused

is a fugitive is no longer a defense to extradition in the State of Florida.

CONCLUSION

The First District's decision below should be upheld, and the trial court's order denying habeas relief should be reversed.


Respectfully submitted,



W. PAUL THOMPSON
Attorney for Respondent
P.O. Drawer 608
DeFuniak Springs, Florida 32433
(904)892-2117

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been mailed to Andrea Smith Hillyer, Assistant Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32301, and the original and seven copies thereof to Honorable Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301, this 1st day of April, 1986.



W. Paul Thompson
Attorney for Respondent