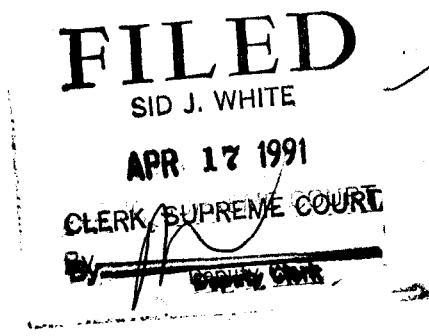
IN THE SUPREME COURT OF FLORIDA

CASE NO. 77,627



THE STATE OF FLORIDA

Petitioner,

vs.

WILLIAM LUSTER,

Respondent.

* *

ON APPLICATION FOR DISCRETIONARY REVIEW

* *

PETITIONER'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

CONSTITUTIONAL AND STATUTORY AUTHORITIES

I. INTRODUCTION

The Petitioner, the State of Florida, was the Appellant in the Third District Court of Appeal and will be referred to as "the Petitioner" in this brief. The Respondent, William Luster, was the Appellee and will be referred to as "the Respondent". The symbol "R" will refer to the record on appeal. The symbol "T" will refer to the transcript of proceedings at the trial court, indexed separately. All emphasis added unless otherwise stated.

STATEMENT OF THE FACTS AND PROCEEDINGS

A. STATEMENT OF THE FACTS

On February 4, 1985, a jury found William Luster guilty of the crime of Assault With a Firearm. (R. 10). On May 7, 1985, Judge Elio Chernow, Superior Court of California, County of Los Angeles, sentenced William Luster to five years in prison pursuant to said conviction. (R. 10).

On October 12, 1987, William Luster was released from prison, to a parole program in Los Angeles, California. On November 30, 1987, the Board of Prison Terms suspended William Luster's parole, effective October 13, 1987, for having failed to report to his assigned residence. (R. 7).

On December 3, 1987, a warrant was issued by the California Board of Prison Terms for the arrest of one William Luster. (R. 16). Based on said warrant, on July 22, 1989, William Luster was arrested in Dade County, Florida, as a fugitive from the State of California. (R. 1).

On August 25, 1989, the Deputy Compact Administrator, Parole and Community Services Division, applied to the Honorable George Deukmejian, Governor of the State of California, for the requisition of one William Luster, who was in the custody of the State of Florida. (R. 6-8). On September 13, 1989, the Governor of California demanded that Bob Martinez, then Governor of Florida, arrest and secure William Luster for delivery to designated agents for the State of Florida. (R. 5). On September 21, 1989, the Honorable Bob Martinez signed the Rendition Warrant of arrest for William Luster, recognizing that the Executive Authority of the State of California had filed with him a Demand for the fugitive William Luster, supported, inter alia, by a Judgment and Sentence. (R. 3).

On September 27, 1989, the Appellee was arrested by the Metro-Dade Police Department pursuant to the Rendition Warrant issued by the Honorable Bob Martinez.

B. STATEMENT OF THE PROCEEDINGS

The Respondent filed a Writ of Habeas Corpus on October 6, 1989. Respondent argued that his confinement was unlawful because the extradition documents were not accompanied by a copy of a judgment of conviction or of a sentence imposed in execution thereof. (R. 17-18). On October 11, 1989, the Petitioner filed their Return to the Writ, asserting that the extradition documents complied with the statutory requirements, and specifically with the California statute governing judgements. (R. 20-21). On October 12, 1989, the trial court heard the Petition for Writ of Habeas Corpus. Petitioner introduced into evidence (T. 7), the Rendition Warrant issued by the Honorable Bob Martinez, Governor of the State of Florida (R. 3), all the supporting documents, including the Demand from the Executive Authority of the State of California (R. 5) and the Abstract of Judgment (R. 10). Petitioner also provided to the Court a copy of the enabling California statute (T. 8). The trial court granted the Writ, discharged the Respondent, and held that an Abstract of Judgment is insufficient under the Florida Statutes and case law. (R. 22). On January 15, 1991, the Third District Court of Appeal affirmed the trial court's opinion. Lawrence v. Luster, 16 FLW 202 (Fl. 3d DCA January 15, 1991). Petitioner's Motion for Rehearing, but did certify the following question as one of great public importance:

> Whether section 941.03, Florida Statutes (1990), is satisfied when the judgment or sentence is executed in accordance with the

laws of the demanding state although the form required by the demanding state does not meet the Florida requirements for a judgment and sentence.

Lawrence v. Luster, 16 FLW 620
(Fl. 3d DCA March 5, 1991)

SUMMARY OF ARGUMENT

The Third District Court of Appeal erred in affirming the ruling of the trial court. Section 941.03, Florida Statutes (1990), is satisfied when the judgement or sentence is executed in accordance with the laws of the demanding state even if the form required by the demanding state does not meet the Florida requirement for a judgement or sentence. To construe the statute otherwise would make it unconstitutional and would be contrary to the dictates of the federal courts.

ARGUMENT

SECTION 941.03, FLORIDA STATUTES (1990) IS SATISFIED WHEN THE JUDGEMENT OR SENTENCE IS EXECUTED IN ACCORDANCE WITH THE LAWS OF THE DEMANDING STATE.

I. Constitutionality

A. Article IV, Section 2, of the United States Constitution provides that:

> A person charged in any state with treason, felony or other crime, who shall flee from Justice, and be found in another state, shall on Demand of the Executive Authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

It is clearly a constitutional mandate that fugitives be returned, rather than harbored, in any state where they seek fugitivity. Any law, to be constitutional, must be interpreted to facilitate the return of fugitives in accordance with this constitutional dictate.

To implement this provision of the United States Constitution, the United States Congress enacted 18 U.S.C. Section 3182, which provides:

> Whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and provides a copy of an indictment found on an affidavit made before a magistrate by any state or territory, charging the person demanded with having committed treason, felony or other crime certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured and notify the executive authority making such demand or the agent of such authority making such demand or

> the agent of such authority appointed to receive the fugitive and shall cause the fugitive to be delivered to such agent when he shall appear.

In addition to the Federal provisions with respect to extradition, the states are empowered to enact extradition legislation not precluded by the Extradition Clause of the United States Constitution or by 18 U.S.C. Section 3182. Biddinger v. Commissioner of Police, 245 U.S. 128, 132-133; 38 S.Ct. 41, 42, 62 L.Ed. 193 (1971); Innes v. Tobin, 240 U.S. 127, 131, 36 S.Ct. 290, 60 L.Ed. 562 (1916).

All states, except South Carolina and Mississippi, have enacted the Uniform Criminal Extradition Act. Such legislation must be interpreted to facilitate rather than hinder the United States Constitution and 18 U.S.C. Section 3182, or this legislation would be precluded.

The provisions of the Uniform Criminal Extradition Act are set out in Chapter 941 of the Florida Statutes. The components of a valid demand are contained in Florida Statute Section 941.03 which states:

> --No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing.-.. and accompanied by an authenticated copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, 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, and the copy of indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.[1]

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[1] As noted in the dissent by Judge Ferguson in the Third District Opinion, "there is no language in the Florida Statute which requires that any particular individual execute the affidavit or judgement accompanying extradition materials." Lawrence v. Luster, 16 FLW at pg. 202.

When a Writ of Habeas Corpus is filed seeking the release a defendant being held for extradition under this provision, the role of the judiciary has been limited to a determination that the jurisdictional prerequisites to the issuance of the warrant exist. These are (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. Michigan v. Doran, 439 U.S. 282, 289, 99 S.Ct. 530, 535, 58 L.Ed.2d 521, 527 (1978); Moore v. State, 407 So.2d 991, 992 (Fla. 3d DCA 1981). This limited review is designed to "preclude any state from becoming a sanctuary for fugitives from justice of another state and thus 'balkanize' the administration of criminal justice among the several states." Michigan v. Doran, 439 U.S. at 287. The order of the trial court fosters balkanization; it contravenes the teachings of Doran, and the plain language of the Florida Statutes.

In the instant case, the Demand from the Executive Authority of the State of California states on its face that Respondent stands charged, and convicted of, Assault With a Firearm. The executive Authority further certified that the Abstract of Judgment and supporting papers "are authentic and duly authenticated in accordance with the laws of the State of California." (R. 5). The Demand adds that "the accused was present in this State at time of the commission of said crime and thereafter violated the terms of parole and fled." (R. 5). Thus, the Demand complies with Section 941.03 Fla. Stat. (1987) and constitutes prima facie evidence that the constitutional and statutory requirements for extradition have been established. State ex rel. Florio v. McCreary, 123 Fla. 9, 165 So. 904 (1936).

The facts at bar are readily distinguishable from the facts in the cases cited in Respondent's petition. (R. 18). In Blasi v. State, 192 So.2d 307 (Fla. 4th DCA 1966), the defendant had pled guilty and had been sentenced; however, the only document submitted by the demanding State was an indictment;

> Nowhere included in the demand or accompanying documents was there a copy of a judgment of conviction or of a sentence imposed in execution thereof. Neither was there a statement by the executive authority of the demanding state that the petitioner had escaped from confinement or had broken the terms of his bail, probation or parole.

Blasi, 192 So.2d at 308. In holding that the documents were insufficient, that court said

> We construe F.S.A. §941.03 to require that those concerned pay heed to its terms to the end that the demanding state must present its demand in a fashion that would accurately and fully reflect the current vehicle whereby and whereunder the demanding state derives its right to claim the extradition of the person sought in accordance with the statutory alternatives furnished.

Id. at 309. Finally, the Blasi court said that "a contrary view... could prejudice the claimed person's right and ability to defend himself in extradition proceedings in showing that he is not a fugitive from justice." Id. at 310. In the instant case, Respondent cannot claim prejudice: the documents and the facts in the instant case conclusively attest to the judgment or sentence imposed (R. 10), and include a statement from the demanding executive that the Respondent violated the terms of parole. (R. 5). Clearly, these documents adequately apprise him of the current status of the proceedings in California.

Respondent relied additionally upon Henry v. State, 496 So.2d 822 (Fla. 2d DCA 1986), the facts of which are also readily distinguishable. In Henry, the documents submitted by the State of New York did not include a certificate of conviction signed by the clerk of the New York Court; apparently, also lacking were the parole warrant and the appropriate language from the demanding executive.

The third case cited by Respondent, Britton v. State, 447 So.2d 458 (Fla. 2d DCA 1984), is not easily distinguished. However, Britton was incorrectly decided. In Britton, the Second District Court of Appeal cited Blasi for the proposition that the documents "must correspond to the stage in the proceedings to which the case against a defendant had progressed." Britton, 447 So.2d at 459. However, Britton went a step further and disallowed a certificate of conviction signed by the clerk of the New York Court. The Second District said:

> If the legislature intended that something less than the document representing the official court action of conviction or sentence would be sufficient and that the risk, however small, of a mistake in someone's conclusion as to the effect of that court action was acceptable, we must presume section 941.03 would have said so. The law commonly requires actual documents, as opposed to conclusory statements concerning those documents, and we see no justification for requiring less in an extradition proceeding involving the deprivation of liberty when the statutory requirement is explicit. Therefore the documents are insufficient to comply with the statute.
>
> Id.

This holding is erroneous and requires further analysis. Section 941.03 Fla. Stat. requires a copy of a judgment or, alternatively, a copy of a sentence imposed in execution thereof. There is no language in the

statute which requires any particular individual to sign either of the documents.

Additionally, court clerks constantly make record entries; as the trial judge noted (T. 15), the clerk may make a mistake, but who among us is infallible? Scrivener's errors are older than pen and paper and the mere possibility of a mistake should not affect the presumptive validity of matters of record. The Second District does not question the validity of a capias issued by the clerk. Shapiro v. State, 456 So.2d 968 (Fla. 2d DCA 1984). The Britton court, most respectfully, missed the boat. A judgment is, by definition, a "decision or sentence of the law pronounced by the court and entered upon its docket, minutes of record." Black's Law Dictionary, Fifth Edition (1979).

The State of California has, by its laws, proclaimed the validity of an Abstract of Judgment. The California statute reads as follows:

> When a probationary order or a judgment, other than of death, has been pronounced, a copy of the entry of that portion of the probationary order ordering the defendant confined in a city or county jail as a condition of probation, or a copy of the entry of the judgment, or, if the judgment is for imprisonment in a state prison, either a copy of the minute order or an abstract of the judgment as provided in Section 1213.5, certified by the clerk of the court, or by the judge if there is no clerk, shall be forthwith furnished to the officer whose duty it is to execute the probationary order or judgment, and no other warrant or authority is necessary to justify or require its execution.
>
> West's Ann. Cal. Penal Code §1213.

This information was provided to the trial court as part of Petitioner's Return to the Writ of Habeas Corpus (R. 21), and a photocopy of the above statute was handed to the trial court during the hearing (T. 8).

The above statute provides that the Abstract shall be "certified by the clerk of the court" except when there is no clerk, then the judge shall certify it. Even by the standard set in Britton, the Abstract is the actual court document. In the absence of proof that the document is spurious or fraudulent, it should be accepted as prima facie evidence of what it purports to be.

Other jurisdictions which have addressed this issue accept the validity of a judgment that is not signed by a judge. In Smedley v. Holt, 541 P.2d 17 (Alaska 1975), that Court analyzed existing cases regarding judgments (in general, rather than as prerequisites to extradition) and said

> While Holt does refer to a number of cases from states other than California which require that judgments be signed, a California case dealing with this specific issue reaches an opposite conclusion. In In re Steiner, the court stated:
>
> 'And the law pertaining to judgments generally recognizes the propriety of an oral pronouncement which is carried into the minutes. The judge's signature to a written judgment is not essential... a judgment is rendered when decision is announced and carried into the minutes.'
>
> Since the validity of the judgment herein submitted must be ascertained by California law, we find the unsigned judgment valid.
>
> Smedley v. Holt, 451 P.2d at 19-20.

The Supreme Court of Colorado, in an extradition case, said

> While the State of Louisiana did not include with its demand a written document signed by a judge... it did forward certified copies of the minutes of proceedings.... The specific issue of whether minute orders suffice in extradition proceedings as either 'a judgment of conviction' or 'sentence' has not been

> addressed previously by this court. However, in Burnette v. McClearn, 427 P.2d 331 (Colo. 1967), we held that a document need not be signed by a judge in order to constitute a copy of a judgement or sentence.

Miller v. Cronin, 593 P.2d 706, 707 (Colo. 1979); accord, Blackwell v. Johnson, 647 P.2d 237 (Colo. 1982).

Similarly, the Supreme Court of the State of Illinois found valid a judgement and sentence that was "neither signed, sealed nor exemplified" and said

> The fact that the signatures on the copy of the judgment are typewritten provides no basis for objection, since the requisition to which it is annexed certifies that 'the annexed documents are duly authenticated' in accordance with the laws of the State of Washington. This is sufficient to satisfy the statute. (Citation omitted).

People ex rel. Jolley v. Koeppel, 42 Ill.2d 257, 246 N.E.2d 247, 248 (1969); see, also, State v. Smith, 6 Ariz. App. 393, 433 P.2d 44, (1967); In re Steiner, 134 Cal.App.2d 391, 285 P.2d 972 (1955); Anderson v. State, 54 Ariz. 387, 96 P.2d 281 (1939); contra, In re Sousie, 147 Vt. 330, 516 A.2d 142 (1986).

It is undisputed that the State of California has submitted the actual court document relied upon by their courts, which is what Britton, supra, requires.[2] Nowhere in Britton does the Second District dictate

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[2] A crucial fact missing from the Britton opinion and therefore indicative that the information was not presented to that court, is the text of New York Criminal Procedure Law §60.60(1) which reads:

> A certificate issued by a criminal court, or a clerk thereof, certifying that a judgment of conviction against a designated defendant has been entered in such court, constitutes presumptive evidence of the facts stated in such certificate.

specific requirements for judgments; in fact, that court said that "the law commonly requires actual documents." Britton, at 459. Extradition law, by nature, must allow for the uncommon; "constitutional and statutory provisions relating to interstate extradition must be liberally construed to effectuate their purpose." State v. Soto, 423 So.2d 362, 365 (Fla. 1982). The technical exactitude adopted by the majority opinion defeats the summary nature of extradition proceedings. State v. Luster, 16 FLW at pg. 202. Petitioner urges the court to adopt the dissenting analysis.

This Court has properly ruled that it may not construe other state laws, saying "[i]t would be improper for this court to make a determination in these [extradition] proceedings as to whether the Michigan statute... violates principles of constitutional due process...." Salazar v. Sandstrom, 355 So.2d 145, 147 (Fla. 3d DCA 1978). As this Court further observed

> Generally, the state and Federal courts and executive officers in the asylum state should not otherwise concern themselves with the legality of the criminal prosecution pending against the fugitive in the demanding state. It is not for courts in the asylum state to inquire into the constitutionality of a sister state's criminal justice system; the constitutional rights of the accused are sure to be safeguarded by the state and Federal courts of the demanding jurisdiction.
>
> Id.

Neither does the opinion identify what evidence or testimony was presented by the fugitive, as the moving party, to show that the certificate was erroneous and he had not been convicted or sentenced in New York.

Therefore, if the State of California has enacted a statute specifying the necessary documents for conducting the business of their courts, and if that document has been prescribed by their judicial council,[3] it is improper for Florida to add more stringent requirements. Contrary to Respondent's argument below (T. 8), the validity of the judgment is determined by California, not Florida law. Contrary to the trial court's belief (T. 14), there are places in the world where a judge does not sign the judgment.

The trial court was aware of the California statute, yet decided to dismiss it as irrelevant. This fact renders Britton distinguishable. However, should this Court find the distinction superfluous, then the inescapable conclusion is that Britton was wrongly decided, as stated in the dissenting opinion.

B. Article IV, Section 1, of the United States Constitution provides that:

> Full Faith and Credit shall be given in each state to the public Acts, Records, and judicial Proceedings of every other state.

The granting of the Writ and Discharge of the Respondent violate this constitutional mandate. The ruling of the trial court as affirmed by the Third District effectively says that because California statutes for the form of a Judgement and Sentence do not meet the Florida Requirements,

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[3] West's Ann. Cal. Penal Code
§1213.5 Abstract of Judgment
The abstract of judgment provided for in Section 1213 shall be prescribed by the Judicial Council. (Added by stats. 1951, c. 460 §4. Amended by stats. 1971, c. 1732 §1; stats. 1972, c. 1131 §3; stats. 1977, c. 165 §222; stats. 1986, c. 248 §164.)

Florida denies giving Full Faith and Credit to the Judgement and Sentence, which are part of the Public Records and Judicial Proceedings of California.

The validity of a document executed in accordance with the laws of a sister state must be accepted; Gaylord v. Gaylord, 45 So.2d 507 (Fla. 1950); Silitronic Chemical Corporation v. R.K.M. Enterprises, 197 So.2d 33 (Fla. 3d DCA 1967), especially in the absence of proof that the document is not normally relied upon by the courts of a sister state. This is analogous to the admissibility of evidence obtained in violation of laws of the State of Florida, as long as the evidence was lawfully obtained according to the laws of a sister state. Echols v. State, 484 So.2d 568 (Fla. 1985); McClellan v. State, 359 So.2d 869 (Fla. 1st DCA 1978).

The extradition laws do not allow an analysis of the foreign plea or trial process. See e.g., State v. Cox, 306 So.2d 156 (Fla. 2d DCA 1974). It is simply erroneous to contend that the State of Florida can dictate to a sister state what it should do when issuing a judgment at the end of that plea or trial. The discharge of the Respondent, affirmed by the Third District, exalted form over substance and "operates to void otherwise valid extraditions". It must be reversed. State v. Soto, 423 So.2d 362, 365 (Fla. 1982).

II. PUBLIC POLICY

In addition to the constitutional requirement to interpret the Uniform Extradition Act in such a way that it facilitates rather than hinders extradition, Florida should not be made a safe haven for criminals from other states. Interpreting the word "judgement" in Florida Statute 941.03, as narrowly as the trial court and Third District have done, effectively makes Florida a haven. Unless the California legislature

changes the statutory provision regarding the form of a California judgement, convicted fugitives from California can never be returned. The Uniform Extradition Act (more particularly the word "judgement" as used in that Act) should not be interpreted in such a way as to provide sanctuary for convicted fugitives. The United States Supreme Court has eschewed such a result. Michigan v. Doran, Id.

CONCLUSION

Based upon the foregoing, it is respectfully suggested that this Court respond to the certified question affirmatively, and state that Section 941.03, Florida Statutes (1990), is satisfied when the judgement or sentence is executed in accordance with the laws of the demanding state.

It is therefore respectfully requested that the decisions of the courts below be reversed and remanded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above and foregoing was forwarded to the Office of the Public Defender, Metropolitan Justice Building, 1351 Northwest 12th Street, Miami, Florida 33125, Attorney for the Respondent, on this the 16 day of April, 1991.

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