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IN THE SUPREME COURT OF FLORIDA

CASE NO. 77,627

THE STATE OF FLORIDA,

Petitioner,

-vs-

WILLIAM LUSTER,

Respondent.

ON APPLICATION FOR DISCRETIONARY JURISDICTION

RESPONDENT'S BRIEF ON THE MERITS

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit
of Florida
1351 N.W. 12th Street
Miami, Florida 33125
(305) 545-3078

N. JOSEPH DURANT, JR.
Assistant Public Defender
Florida Bar No. 021365

Counsel for Petitioner

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INTRODUCTION

The petitioner, the State of Florida, was the appellant in the Third District Court of Appeal and the defendant in the trial court. The respondent, William Luster, was the appellee in the Third District Court of Appeal and the plaintiff in the trial court. The parties will be referred to as they stood in the trial court. The symbol "A." will be used to refer to the appendix attached hereto. All emphasis is supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The statement of the case and facts in the state's brief is accurate and acceptable to the defendant.

The decision in question is reported as Lawrence v. Luster, 575 So.2d 220 (Fla. 3d DCA 1991).

QUESTION PRESENTED

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?

SUMMARY OF ARGUMENT

In an extradition proceeding where the alleged fugitive's liberty is at stake, the Florida extradition statute must be complied with. Thus, the certificate of a clerk cannot take the place of a official judgment and sentence signed by a court of competent jurisdiction.

ARGUMENT

SECTION 941.03, FLORIDA STATUTES (1990) IS NOT 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.

The precise issue in this case was resolved contrary to the state in Britton v. State, 447 So.2d 458 (Fla. 2d DCA 1984). There, the state argued, as the state does here, that a certificate of conviction signed by the clerk of a New York court was equivalent to a judgment and sentence. In rejecting this contention, the court reasoned s follows:

> "However much one may rationalize that the clerk of the court is capable of writing a conclusion of what happened in his court, the fact remains that this certificate is only that -- a conclusion. We are not entitled to ignore the statutory requirement in issue by characterizing it as hypertechnical. If the legislature intended that something less than the document representing the official court action of conviction or sentence would be sufficient and that this 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."

The holding in Britton was consistent with an earlier holding of the Fourth District Court in Blasi v. State, 192 So.2d 307 (Fla. 4th DCA 1966) where the Court said:

> ". . . if the person demanded has been tried, convicted and sentenced and has broken the terms of his probation, then the demanding state is required to accompany the demand with

> a copy of the sentence imposed, together with a statement that the person claimed has broken the terms of his probation, and in such event, it is not necessary that the demand be accompanied by a copy of the indictment and information under which the person was tried and convicted. In other words, the alternative applicable to a particular case must be selected and used."

The rationale behind the abovecited cases is clear. One of the privileges enjoyed by an American citizen is to freely choose the state where he wishes to reside with the knowledge that his freedom to reside therein will not be disturbed without due process of law. It is submitted that a clerk's certificate does not rise to the level of formal judicial action and is simply not enough to justify deprivation of a Florida resident's freedom.

CONCLUSION

Based on the cases and authorities cited herein, the respondent requests this court to approve the decision of the Third District Court of Appeal and to answer the certified question in the negative.

Respectfully submitted,

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit
of Florida
1351 N.W. 12th Street
Miami, Florida 33125
(305) 545-3078

BY: N. Joseph Durant Jr.
N. JOSEPH DURANT, JR.
Assistant Public Defender
Florida Bar No. 021365

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by hand to the office of the State Attorney, Barbra G. Pinerio, Assistant, 1351 N.W. 12th Street, Miami, Florida 33125, this 9th day of May, 1991.

N. Joseph Durant, Jr.
N. JOSEPH DURANT, JR.
Assistant Public Defender

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APPENDIX

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close a landowner from reapplying to the original administrative agency to again seek rezoning on an allegation of change in circumstances. Alleged change in circumstances, however, does not entitle the landowner to circumvent the administrative process and seek de novo review of rezoning requests before the circuit court through the original action appealed, *e.g., Key Haven Associated Enters., Inc. v. Board of Trustees of Interndl Imp. Trust Fund*, 427 So.2d 153 (Fla.1982); *Coral Reef Nurseries*, 410 So.2d at 648.

Finding no merit in the other contentions, summary final judgment in favor of the city is affirmed.

Lonnie LAWRENCE, Director, Dade County Department of Corrections and Rehabilitation, and/or the State of Florida, Appellant,

v.

William LUSTER, Appellee.

No. 89-2526.

District Court of Appeal of Florida, Third District.

Jan. 15, 1991.

Opinion revised on Denial of Rehearing March 5, 1991.

Petition was filed for writ of habeas corpus. The Circuit Court, Dade County, Arthur I. Snyder, J., granted petition. Appeal was taken. The District Court of Appeal held that certificate of conviction signed by clerk of California superior court did not meet statutory mandate requiring that extradition demand be accompanied by copy of judgment of conviction or of sentence imposed in execution thereof.

Affirmed.

Ferguson, J., filed a dissenting opinion.

Extradition and Detainers ⇐34

Certificate of conviction signed by clerk of California superior court did not meet statutory mandate requiring that extradition demand be accompanied by authenticated copy of indictment found or by information supported by affidavit in state having jurisdiction of crime or by copy of judgment of conviction or sentence imposed in execution thereof. West's F.S.A. § 941.03.

Robert A. Butterworth, Atty. Gen., and Gerardo M. Simms, Asst. Atty. Gen., Janet Reno, State Atty., Barbra G. Pineiro, Asst. State Atty., for appellant.

Bennett H. Brummer, Public Defender, and N. Joseph Durant, Jr., Asst. Public Defender, for appellee.

Before FERGUSON, JORGENSON and GODERICH, JJ.

PER CURIAM.

The State appeals from an order granting William Luster's Petition for Writ of Habeas Corpus. We affirm.

Based upon a rendition warrant executed by the Governor of Florida, William Luster was arrested in Dade County as a fugitive from the state of California. Luster is alleged to have violated his parole from a sentence and conviction for assault with a firearm. The extradition documents from California were accompanied by an "Abstract of Judgment," a document prepared and executed by the Clerk of the Superior Court of Los Angeles County.

Luster petitioned for a writ of habeas corpus, alleging that the California extradition documents failed to meet the requirements of the Florida extradition statute, section 941.03, Florida Statutes (1989). The trial court correctly granted the petition.

Section 941.03 requires that the extradition demand be accompanied by "an au-

thenticated 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...*" (emphasis added). In this case, instead of forwarding an authenticated copy of the judgment of conviction, the California authorities forwarded a clerk's certificate. A certificate of conviction signed by a clerk of court does not meet the mandate of section 941.03. *Britton v. State*, 447 So.2d 458 (Fla. 2d DCA 1984).

Accordingly, the order granting the Petition for Writ of Habeas Corpus is

AFFIRMED.

JORGENSON and GODERICH, JJ., concur.

FERGUSON, Judge (dissenting).

The order granting the appellee's Petition for Writ of Habeas Corpus should be reversed and the cause remanded to the trial court with instructions to return the defendant to the State of California. The extradition documents, which were accompanied by an Abstract of Judgment executed by the Los Angeles County Clerk of Superior Court, satisfied the requirements of 18 U.S.C. § 3182 (1985),[1] which implements the Extradition provision of the United States Constitution. The California extradition documents also satisfied the letter of California law and the spirit of section 941.03, Florida Statutes (1989).

The State of California authorizes an Abstract of Judgment as prima facie evidence of a conviction and sentence. The California statute states:

> 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 judgement 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.*

Cal. Penal Code § 1213 West (1990). [Emphasis added.]

First, the validity of the affidavit here should be determined by California law. *State ex rel. Treseder v. Remann*, 165 Wash. 92, 4 P.2d 866 (1931). Further, the California statute does not conflict with Florida law since there is no language in the Florida statute which requires that any particular individual execute the affidavit or judgment accompanying extradition materials.

Section 941.03, Florida Statutes (1989) reads:

> No demand for the extradition of a person charged with a 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 warrant supported by an affidavit made before a committing magistrate of the demanding state; or by a copy of a judgment of conviction or of a sen-*

1. 18 U.S.C. § 3182 (1985) 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 produces a copy of an indictment found or an affidavit made before a magistrate of 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.

tence 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.

[Emphasis added.] An Abstract of the Judgment signed by the clerk of the California court clearly meets the mandate of section 941.03.

In my view, *Britton v. State,* 447 So.2d 458 (Fla. 2d DCA 1984), relied on by the majority, was incorrectly decided. Its attempt at technical exactitude defeats the summary nature of extradition proceedings. *See State v. Soto,* 423 So.2d 362 (Fla.1982) (the purpose of interstate extradition is to furnish expeditious and summary procedure for bringing suspects to trial in the state in which the alleged offense was committed).

Other jurisdictions addressing this issue accept the validity of a judgment in the absence of the sentencing judge's signature. In *Smedley v. Holt,* 541 P.2d 17 (Alaska 1975), the State high court held that it would recognize a clerk's abstract of judgment in California extradition materials which was valid under California law. *See also Burnette v. McClearn,* 162 Colo. 503, 427 P.2d 331 (1967) (judge's signature not necessary in North Carolina extradition documents where documents were authenticated by Governor's office).

The role of the judiciary in habeas corpus proceedings has been limited to a determination that the jurisdictional prerequisites to the issuance of the warrant exist. *Moore v. State,* 407 So.2d 991 (Fla. 3d DCA 1981). The strict limitation on judicial examination of extradition papers is 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. 282, 99 S.Ct. 530, 58 L.Ed.2d 521 (1978).

With the majority decision, we have essentially declared invalid a valid California extradition law that has been upheld by an Alaska high court—the very same balkanization which the United States Supreme Court said should be avoided.

ON MOTION FOR REHEARING AND/OR CERTIFICATION OF QUESTION

PER CURIAM.

The State of Florida has moved for rehearing and requested that the issue presented in this case be certified. We revise our original opinion to include the following question as one that passes upon an issue 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.

In all other respects, the motion for rehearing is denied.

Pieter BAKKER, Shirley Bakker, Pieter Bakker Management, Inc., and Pieter Bakker Marketing, Inc., Appellants,

v.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF HAMMONTON, NEW JERSEY, Pirates Cove Villas, Inc., and Buccaneer Lodge, Inc., Appellees.

No. 90–1212.

District Court of Appeal of Florida, Third District.

Jan. 15, 1991.

Rehearing Denied March 21, 1991.

Bank brought foreclosure action against borrowers. Borrowers filed coun-