IN THE SUPREME COURT OF FLORIDA

GLEN EDWARDS ROGERS,

Appellant,

vs. CASE NO. 92,137

STATE OF FLORIDA,

Appellee.

_____/

ANSWER BRIEF OF THE APPELLEE

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CAROL M. DITTMAR
Assistant Attorney General
Florida Bar No. 0503843
2002 North Lois Avenue, Suite 700
Tampa, Florida 33607-2366
(813) 873-4739

COUNSEL FOR APPELLEE

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STATEMENT OF THE CASE AND FACTS

The following is offered to supplement the Statement of the Case and Facts recited by Appellant Rogers:

The extradition agreement entered in this case specifically provides that, "legal counsel representing the fugitive on the appeal of his Florida convictions and death sentence shall be allowed reasonable access to the fugitive" (R/ Vol. I, p. 33).

SUMMARY OF THE ARGUMENT

The trial court properly denied Appellant Rogers' petition for writ of habeas corpus. The question raised herein, whether the pendency of Rogers' appeal in this Court (Florida Supreme Court Case No. 91,384) precludes Rogers' extradition to California, is not properly before this Court because (1) judicial review is limited to whether there has been technical compliance with extradition requirements; (2) Rogers has no standing to invoke Section 941.19, Florida Statutes, as a basis to deny extradition; (3) any concerns about Rogers' right to appellate counsel in Case No. 91,384 being hindered by the extradition are more appropriately addressed as part of that case rather than as part of the extradition process. Even if the claim is considered, Rogers' constitutional right to counsel would not be violated by his extradition, since the extradition agreement expressly guarantees that his counsel will have reasonable access to him; since a defendant's ability to participate in his appeal is greatly limited by the nature of appellate proceedings; and since the Sixth Amendment does not encompass a right to a meaningful relationship with counsel.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S PETITION FOR WRIT OF HABEAS CORPUS.

The appellant asserts that the question in this case is whether his direct appeal is "more important to this state" than California's desire to try him with murder (Appellant's Initial Brief, p. 5). In fact, the constitutional mandate for the unimpeded interstate extradition of fugitives does not permit this Court the luxury of weighing what interest this State may have in denying California's request for extradition. See, Puerto Rico v. Branstad, 483 U.S. 219 (1987). This Court has clearly acknowledged that, in considering whether habeas relief should be granted for a sought-after interstate fugitive, courts are limited to determining whether the extradition documents are facially valid, whether the petitioner has been charged with a crime in the demanding state, whether the petitioner is named in the demand, and whether the petitioner is a fugitive. State v. Luster, 596 So.2d 454, 456 (Fla. 1992); see also, Michigan v. Doran, 439 U.S. 282, 289 (1978). Possible constitutional violations committed in or by the asylum state are not cognizable in a habeas petition challenging extradition. State ex rel. Sneed v. Long, 871 S.W.2d 148 (Tenn. 1994) (copy in record at Vol. I, pp. 65-67). Thus, Rogers'

suggestion that his pending capital appeal can be used as a basis for habeas relief is outside the narrow scope of judicial review applicable in these proceedings.

In addition, Rogers' reliance on Section 941.19, Florida Statutes, as grounds for habeas relief is misplaced. That section codifies Florida's right to delay the requested extradition until the fugitive "has been tried and discharged or convicted and punished." However, as Rogers notes, the statute grants power exclusively in the Governor to decide whether to extradite a defendant currently under prosecution in Florida. Therefore, he has no standing to assert that statute as protection from extradition in his case. Since the Governor has exercised his discretion to grant extradition, this Court has no statutory authority under Section 941.19 to interfere with the executive agreement that has been reached.

Rogers' assertion that such authority exists by virtue of this Court's inherent authority to exercise any power necessary to complete its exercise of jurisdiction in the orderly administration of justice is similarly unavailing. In State v. Ford, 626 So.2d 1338 (Fla. 1996), cited by the appellant, this Court rejected a claim that error occurred because the procedure used by the trial court in admitting videotaped testimony was not expressly authorized by statute or rule, noting trial courts had inherent

authority beyond the procedures codified in law. However, the comment that a trial court had inherent authority to administer justice was qualified, "subject to valid existing laws and constitutional provisions." 6.26 So.2d at 1345. Therefore, the Ford case does not suggest that a court may deny a valid extradition request on the basis of its inherent authority to administer justice.

To the extent that this Court determines it is necessary to take extraordinary measures to protect the orderly administration of justice in Rogers' capital appeal, such measures would appropriately be taken as part of that case rather than as part of these proceedings. For example, if Rogers' appellate counsel can establish that her ability to consult with Rogers is completely defeated while he is in California, this Court may find it necessary to to11 the appeal. Certainly, however, neither extraordinary measures nor habeas relief is warranted at this point, where only speculation that a right to counsel might be impacted has been offered.

For all of the above reasons, Rogers' claim that the pendency of his capital appeal precludes his extradition and demands that habeas relief be afforded is not properly before this Court. However, should this Court choose to consider the issue, Rogers has not demonstrated that his Sixth Amendment right to appellate

counsel will be violated by his extradition. Although Rogers' brief repeatedly asserts that California "has not promised to guarantee him access to his Florida counsel," (Appellant's Initial Brief, pp. 5, 7, 14), this assertion is belied by the executive agreement itself, which explicitly states that his appellate attorney "shall be allowed reasonable access" to Rogers while he is in custody in California (R/ Vol. I, p. 33).

Furthermore, a defendant's right to participate in his appeal is necessarily limited by the nature of appellate review. An appellate attorney is limited to presenting facts and claims that are included in the record on appeal. At the appellate level, the responsibilities and obligations of counsel are much different than at trial, and personal consultation with the defendant is not as essential, The Sixth Amendment does not establish a right to a "meaningful relationship" with counsel. Morris v. Slappy, 461 U.S. 1, 13-14 (1983).

Notwithstanding the extra-record affidavit of Rogers' appellate counsel filed with his initial brief,[1] no potential Sixth

[1]Significantly, the affidavit acknowledges that appellate counsel has not even preliminarily started the work on his appeal; she also acknowledges that "extensive" supplementation of the record may be necessary. Typically, such supplements are sought shortly before the brief is due, and extend the time for filing the brief by several months. Since his brief is currently due June 1, 1998, it is not likely to be filed until much later this year. Under this scenario, Rogers may be returned to Florida before his brief is even filed.

Amendment violation has been demonstrated by Rogers. Counsel's concerns that her usual practice of personally meeting with clients might be disrupted or that her ability to provide legal materials will be compromised by her lack of familiarity with the rules and regulations of California prisons do not demonstrate that constitutional error is imminent. Absent some evidence that his attorney's performance would be adversely affected by Rogers' presence in California, the Sixth Amendment cannot be used as a shield to protect Rogers from extradition in this case.

Rogers' benevolent concerns for the State of Florida's interest in securing a speedy retrial should his capital appeal grant him such relief and for the expense to the taxpayers should his appellate counsel deem it necessary to travel to California to meet with him are appreciated but misplaced. For example, should a retrial prove necessary, it might actually benefit the State to have an additional aggravating factor premised on any California violent felony conviction. And the cost to the taxpayers of sending one attorney to meet briefly with Rogers in California, should it prove necessary, would be inconsequential -- probably less than the taxpayer expense created by the instant habeas appeal, particularly if Rogers' request for oral argument is granted and the taxpayers have to pay for the undersigned to travel to Tallahassee. These reasons clearly do not compel the granting

of habeas relief in this case.

Rogers has failed to establish that the pendency of his capital appeal precludes his extradition to California and compels the granting of habeas relief in this case. Therefore, this Court must affirm the order entered below denying his petition for writ of habeas corpus.

CONCLUSION

Based on the foregoing arguments and authorities, the trial court's denial of habeas relief should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CAROL M. DITTMAR
Assistant Attorney General
Florida Bar No. 0503843
2002 N. Lois Avenue, Suite 700
Tampa, Florida 33607-2366
(813) 873-4739
COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Glen P. Gifford, Assistant Public Defender, Second Judicial Circuit, 301 S. Monroe, Suite 401, Tallahassee, Florida, 32301, this 26th day of February, 1998.

COUNSEL FOR APPELLEE