

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-213

MAY TERM, 2006

Robert J. Somers

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APPEALED FROM:

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v.

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Caledonia Superior Court

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Rob Hofmann, Commissioner of

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Department of Corrections

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DOCKET NO. 231-11-04 Cav

Trial Judge: Walter M. Morris, Jr.

In the above-entitled cause, the Clerk will enter:

Petitioner Robert J. Somers appeals from the trial court=s order denying his petition for a writ of habeas corpus. He argues that the State failed to present a prima facie case that he was the individual sought in an extradition request from the Commonwealth of Virginia. We affirm.

Petitioner was arrested in August 2004 on a warrant alleging that he was a fugitive from justice from Virginia. He was served with a Governor=s warrant in October 2004. He filed a habeas petition, asserting that the Governor=s warrant was invalid because the supporting documents failed to comply with the requirements of

13 V.S.A. ' 4943(b). More specifically, he asserted that there were discrepancies in the physical description of the individual sought as well as the individual's birth date. The Virginia arrest warrant identified the accused as ARobert J. Somers,@ and it described an individual born on June 13, 1981, who was 5' 11", and weighed 300 pounds; petitioner's Vermont arrest and custody report described him as 6' 0" and weighing 230 pounds. A fingerprint card identified petitioner's birth date as June 14, 1981. After a hearing, the court made findings of fact on the record and issued an entry order denying the habeas petition. The court concluded that the State produced sufficient, competent proof of identity to sustain petitioner's detention. This appeal followed.

Petitioner argues that the trial court erred in finding that the State presented a prima facie case that he was the individual sought by the warrant. In support of his argument, he points to the same discrepancies that he cited in the trial court below.

We find no error. To support a warrant of extradition, the documents presented by the executive authority making the demand must show that:

- (1) . . . the accused was present in the demanding state at the time of the commission of the alleged crime, and thereafter fled from that state;
- (2) [t]he accused is now in [Vermont]; and
- (3) [h]e is lawfully charged by indictment found or by information filed by a prosecuting officer and supported by affidavit to the facts, or by affidavit made before a magistrate in that state, with having committed a crime under the laws of that state . . . .

13 V.S.A. ' 4943(b). Our review of the legality of a sister state's extradition request is limited. In re Ladd, 157 Vt. 270, 272 (1991). AOur sole task is to ensure the validity of the requisition warrant and procedural compliance with our extradition statute, and we will not look behind these documents or examine the merits of the charges against petitioner.@ Id. (citation omitted). A[A] Governor's warrant is prima facie evidence that the constitutional and statutory requirements for extradition have been met.@ Id. at 274.

The contested issue in this case was identity. The State must make a prima facie showing that the accused is the same person sought in the Governor=s warrant. @ In re Lovejoy, 150 Vt. 588, 590 (1988). We have held that the identity of name is sufficient to meet all statutory requirements, unless the accused rebuts the presumption created by that identity by offering evidence that he is not the same person named in the indictment. In re Jones, 164 Vt. 619, 620 (1995) (mem.) (citing In re Haynes, 155 Vt. 256, 259 (1990)). In this case, petitioner was identified by name in the Governor=s warrant and thus he is presumed to be the individual sought by Virginia authorities. The State also introduced petitioner=s admissions that he had been in Virginia and engaged in the alleged criminal conduct, as well as a photograph that the Virginia authorities had used to identify the accused; both of which the court found corroborated petitioner=s identity as the man sought in the warrant. The State=s evidence was plainly sufficient to establish a prima facie case that petitioner was the individual sought by the Governor=s warrant, despite minor discrepancies as to height and birth date, and despite an arguably larger discrepancy in reported weight. Petitioner did not present any evidence on his own behalf at the hearing and he failed to rebut the presumption. We thus find no error in the trial court=s denial of his petition for a writ of habeas corpus.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice

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