

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-464

MAY TERM, 2006

Randy Francis

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APPEALED FROM:

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v.

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Orleans Superior Court

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Robert Hofmann

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DOCKET NO. 191-7-05 OsCv

Trial Judge: Amy M. Davenport

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

Petitioner appeals the district court=s denial of his petition for a writ of habeas corpus, in which he challenges his extradition to Kentucky. We affirm.

The State of Kentucky seeks petitioner=s extradition to stand trial on two felony charges. On July 1, 2005, petitioner filed a habeas petition alleging that he was not lawfully charged by indictment because the facts supporting the indictment were Aso egregiously insufficient as to violate substantive due process.@

Approximately two weeks later, petitioner filed an amended petition alleging that he was not lawfully charged by indictment because the grand jury foreman who signed the indictment was a convicted felon and therefore ineligible for jury service. In support of his amended petition, petitioner attached an article from a newspaper website stating that the grand jury foreman had been replaced while officials investigated his failure to report that he had been convicted of a felony twenty-seven years earlier. Following a hearing, the district court refused to dismiss the extradition request, stating that A[i]nquiry into the legitimacy of the foreperson=s qualifications is an impermissible examination of the demanding state=s judicial proceedings.@

On appeal, petitioner argues that because the indictment supporting the request for extradition was fraudulently signed by a grand jury foreman who was ineligible for jury service, petitioner was not A lawfully charged@ by indictment, as required by 13 V.S.A. ' 4943(b)(3). We find this argument unavailing. Vermont law requires that a request for extradition be accompanied by either an information and affidavit or an indictment charging a person with having committed a crime in the demanding state. Id. ' 4943(a). An extradition warrant shall not be issued unless the documents presented by the demanding state show, in relevant part, that the person A is lawfully charged by indictment . . . with having committed a crime under the laws of that state.@ Id. ' 4943(b)(3). Because interstate extradition is a summary procedure that imposes only a minimal burden on the demanding state, In re Ladd, 157 Vt. 270, 272 (1991); In re Everett, 139 Vt. 317, 319 (1981), A[t]he scope of a habeas corpus review is limited to an examination of whether the extradition documents satisfy the Act=s demands,@ Deyo v. Snelling, 139 Vt. 341, 343 (1981). See Ladd, 157 Vt. at 272 (emphasizing that limited function in reviewing extradition request is A to ensure the validity of the requisition warrant and procedural compliance with our extradition statute@); In re Moskaluk, 156 Vt. 294, 297 (1991) (noting that A our function in reviewing the legality of extradition pursuant to a governor=s warrant is essentially to determine the correctness of the requisition papers and the identity of the person arrested@). Therefore, in reviewing a request for extradition A we will not look behind [the extradition] documents or examine the merits of the charges against petitioner.@ Ladd, 157 Vt. at 272; see, e.g., Moskaluk, 156 Vt. at 297 (refusing to look behind Louisiana affidavit to determine whether information contained therein was lawfully obtained); Deyo, 139 Vt. at 343 (stating that inquiry into extradition request A should not include an examination of the demanding state=s laws or judicial proceedings@).

Here, in arguing that the indictment was unlawful, petitioner cites Kentucky cases granting a new trial to a criminal defendant convicted by a jury that included a convicted felon, see Anderson v. Commonwealth, 107 S.W.3d 193, 194 (Ky. 2003), and dismissing an indictment that was issued by a grand jury empaneled by three court designees rather than a circuit court judge, see Nelson v. Commonwealth, 841 S.W.2d 628, 631 (Ky. 1992). According to petitioner, because possibly only nine members [of the grand jury] voted to indict [petitioner] and the illegitimate foreman=s vote counted among them,@ it is impossible to conclude that the indictment complied with Kentucky law.@ Further, in petitioner=s view, because the foreperson alone attested to the veracity of the indictment, his fraudulent signature renders the indictment illegal.

Petitioner fails to cite any authority to support his presumption that the foreperson=s failure to disclose background information on juror qualification forms rendered the indictment fraudulent. Notwithstanding his arguments, the requisition documents indicate on their face that petitioner was lawfully charged by indictment, and this case presents a good example of why extradition review should be limited to such. The newspaper article that petitioner relies on raises the question of whether the foreperson=s civil rights had been restored in Oklahoma over twenty-five years earlier. Thus, his jury disqualification is at least open to question. See Ky. Rev. Stat. Ann. ' 29A.080(2)(e) (prospective juror is disqualified to serve if juror is convicted felon who has not been pardoned or received restoration of civil rights by authorized person in jurisdiction where convicted). Even assuming that the foreperson was not qualified to sit on the grand jury, there is no indication that less than nine of its members concurred with the indictment, see Ky. Rev. Stat. Ann. ' 29A.200 (AA grand jury shall consist of twelve (12) persons, nine (9) of whom concurring may find an indictment.@), and thus no assurance that Kentucky law would require vacating the indictment, see Rice v. Commonwealth, 387 S.W.2d 4, 5 (Ky. 1965) (declining to overturn conviction based on claim that two jurors were ineligible to serve, given that grand jury proceeding is not a trial and, even if two jurors were ineligible, only nine of twelve jurors were required to issue indictment). In short, the district court was not required to examine particular facts concerning the investigation of the foreperson or to construe potentially relevant out-of-state law to determine whether petitioner was lawfully charged by indictment. Those issues are properly left for the Kentucky courts to decide if petitioner chooses to pursue them. Cf. Everett, 139 Vt. at 319 (concluding that substantive issue petitioner sought to raise in

Vermont habeas proceeding could be litigated in New Hampshire court in trial on merits following extradition). Because the extradition documents were facially valid, the court properly rejected petitioner=s request for an order denying extradition.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice