

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-072

MAY TERM, 2006

Daniel Muller

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APPEALED FROM:

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v.

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Windsor Superior Court

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Department of Corrections

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DOCKET NO. 475-10-05 Wrcv

Trial Judge: William D. Cohen

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

Petitioner challenges the superior court=s decision granting summary judgment to the Department of Corrections on the petition for writ of habeas corpus. We affirm.

Petitioner is committed to the care and custody of the DOC pursuant to an extradition demand from the State of Florida. Petitioner challenged the adequacy of the extradition demand by seeking a writ of habeas corpus, alleging that the demand did not meet the requirements of Vermont=s codification of the Uniform

Criminal Extradition Act, 13 V.S.A. " 4941-4969. Specifically, petitioner argued that the information contained in the extradition demand was not Afiled by a prosecuting officer@ and the affidavit was not Amade before a magistrate@ of the State of Florida, as required by ' 4943(b)(3).\* The DOC moved for summary judgment on the habeas petition, which the superior court granted.

In reaching its decision, the superior court noted that the extradition demand included an Amended Felony Affidavit signed by M.M. Handsel, who is identified as an Assistant State Attorney, and a Pasco County Complaint Affidavit detailing the allegations against petitioner and signed under penalty of perjury. The court explained at the outset that ' 4943(b)(3) does not require an affidavit before a magistrate where the extradition demand contains an information filed by a prosecuting officer. Accordingly, the threshold issue was whether there was sufficient documentation that the signatory of the information was authorized as a prosecuting officer. Concluding that the documentation was sufficient, the court cited in support: (1) the designation of AAssistant State Attorney@ on the signature line; (2) that the signature was notarized; (3) the Florida court=s commitment order which was based on the affidavit of probable cause; and (4) the court clerk=s authorization of the information as being signed by a State Attorney. The court concluded that the facts in this case were similar to those in In re Graziani, 156 Vt. 278, 280-81 (1991), where this Court held that the documentation in the extradition demand was sufficient.

On appeal, petitioner reiterates his arguments presented to the trial court. We review a grant of summary judgment de novo where, as here, there are no contested issues of fact and the only question is whether the prevailing party is entitled to judgment as a matter of law. In re Estate of Kurrelmeyer, 2006 VT 19, & 7. 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).

In Graziani, we concluded: AThe extradition demand was supported by two >Information= forms from a Connecticut state=s attorney=s office. The first was signed by an assistant state=s attorney; the latter was

signed by a deputy assistant state=s attorney. Either of these documents satisfy the >information filed by a prosecuting officer= language of ' 4943.@ 156 Vt. at 280-81. We further noted that the Connecticut court had issued an arrest warrant based on the information, and that we would not assume that the court had done so without authority. Similarly, the extradition demand in this case contained a notarized information which was the basis for the Florida court=s commitment order. We will not assume that the Florida court entered its order based on an invalid information.

The extradition demand meets the requirements of ' 4943(b)(3).

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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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\* This section provides in relevant part: A[a] warrant of extradition shall not be issued unless the documents presented by the executive authority making the demand show that: . . . [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 . . . @

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