



06/12/43 HART v. MOUNT

26 S.E.2d 453 (1943) | Cited 0 times | Supreme Court of Georgia | June 12, 1943

Statement of facts by Duckworth, Justice.

Harry Hart brought his petition for , alleging that he was being held by the sheriff of Fulton County on an extradition warrant by the Governor of Georgia, ordering his return to Illinois upon the requisition of the Governor of that State, which requested apprehension and return of Harry Hart, a fugitive, who while serving a sentence escaped and came to Georgia. He alleged that he was being illegally detained, for the reason that no proof or evidence had been offered before the Governor, showing that he was the same person for whom the requisition was made. At the trial there was testimony that at the hearing before the Governor's secretary the petitioner produced evidence to the effect that he was not the person named in the requisition. It was admitted that the name in the requisition was Harry Hart. The Governor's warrant contained the same name, and the petitioner's true name was Harry Hart, thus showing an identity of names. The requisition papers showed an indictment in the State of Illinois, charging Harry Hart with an offense, and a sentence of a court of that State, ordering Harry Hart to serve a term of twelve months, and that he began serving the sentence in June, 1935, and escaped from prison in September, 1935. Two officers testified, on the habeas-corpus trial, that the petitioner admitted to them that he was originally from the State of Illinois, that he escaped from there, and that he had served three months, which he thought was enough. One of the officers testified that the petitioner made the following statement to him: "My wife has been down here, and we had some trouble, and she went back up there and turned me up." The petitioner was remanded to the custody of the sheriff, and he excepted.

It is provided in the constitution of the United States (Code, § 1-403) that "A person charged in any State with treason, felony, or other crime, who shall flee from Justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." Thus it is plain that the constitution imposes a duty upon the executive authority of each State of this Union to honor the demand of another State for the extradition of a fugitive from the demanding State. It is not by virtue of mere comity that an extradition warrant is issued, but in obedience to the constitutional mandate. See *Hames v. Sturdivant*, 181 Ga. 472 (182 S.E. 601). By the statute it is expressly made the duty of the Governor of Georgia under his warrant to cause to be arrested and delivered up to the proper officers of the demanding State any fugitive from Justice. Code, § 44-302. It is also the duty of the sheriffs, their deputies, coroners, and constables to execute the Governor's warrant when it is placed in their hands. § 44-305. The law presumes that a warrant which is regular on its face was issued regularly. *Blackwell v. Jennings*, 128 Ga. 264 (2) (57 S.E. 484). Such warrant is *prima facie* sufficient legal authority for the detention of the accused, the presumption being that the Governor has complied with the law,



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although the accused may, on the trial of the proceeding, show any valid reason why the warrant should not be executed. *Dawson v. Smith*, 150 Ga. 350 (2) (103 S.E. 846). In habeas-corpus trial the guilt or innocence of the accused is not open to inquiry by the courts of this State. It was held in *Johnston v. Riley*, 13 Ga. 97 (7) that the Governor in an extradition case has no right to make an additional record, but must be governed by the record as sent to him by the demanding State. See *Lascelles v. State*, 90 Ga. 347 (16 S.E. 945, 35 Am. St. R. 216). It thus appears that when requisition papers make a case under the constitution (Code, § 1-403), the Governor without more should honor the demand and issue his warrant for extradition.

There is one provision in the statute for a hearing by the Governor as a prerequisite to the issuance of his warrant. The Code, § 44-302, declares: "If such fugitive shall have assumed another name in this State, and the Governor shall be satisfied, by evidence under oath filed in his office, of the identity of such person with the fugitive demanded, he shall state the fact in his warrant for the arrest." This provision of the statute becomes operative only when the fugitive has assumed a different name in this State; and its purpose is to ascertain in advance of the arrest whether or not the person having such assumed name is in fact the same person described in the requisition proceeding by another name, and thus arm the arresting officer with adequate legal authority for taking into custody a person whose assumed name is different from the name appearing in the warrant. There is no question of an assumed name in the present case. The admitted name of the petitioner is identical with the name appearing in the extradition proceeding. This identity of names is *prima facie* an identity of persons. *Shuler v. State*, 125 Ga. 778 (54 S.E. 689); *Williams v. State*, 62 Ga. App. 679 (3) (9 S.E.2d 697); *Stinson v. State*, 65 Ga. App. 592, 594 (16 S.E.2d 111). The petitioner offered on the trial no evidence for the purpose of rebutting the *prima facie* case thus made. Hence on the record the petitioner is the same person as described in the extradition proceeding. Evidence was offered to the effect that on a hearing by a secretary of the Governor the petitioner produced evidence that showed that he was not the person described in the extradition papers. This evidence had no relevancy on the trial of the habeas-corpus case, and constituted no ground for discharging the petitioner from custody. There was evidence showing an admission by him that he was the same person as described in the extradition proceeding. The court did not err in remanding him to the custody of the sheriff.

Judgment affirmed.

