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JURISDICTIONAL STATEMENT

Respondent adopts the Jurisdictional Statement offered in Relator's brief.

STATEMENT OF FACTS

Respondent adopts the Statement of Facts offered in Relator's brief.

POINTS RELIED ON

I. Relator's Writ of Prohibition or in the alternative, Writ of Mandamus, should now be dismissed due to Relator's failure to file a Writ of Habeas Corpus.

Section 548.101 RSMo. (1994)

II. Respondent did not err in denying Relator's Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing for the reason that due process does not require Relator to be competent for purposes of the extradition proceeding.

Charlton v. Kelly, 229 U.S. 447, 33 S. Ct. 945, 57 L. Ed. 1274 (1913)

Lopez-Smith v. Hood, 121 F.3d 1322 (9th Cir. 1997)

Romeo v. Roache, 820 F.2d 540 (1st Cir. 1987)

DeSilva v. DiLeonardi, 181 F.3d 865 (7th Cir. 1999)

III. Respondent did not error in denying Relator's Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing, nor did Respondent violate the Americans with Disabilities Act, for the reason that the Americans with Disabilities Act does not apply to extradition proceedings.

42 U.S.C. §12131

ARGUMENT

I. Relator's Writ of Prohibition or in the alternative, Writ of Mandamus, should now be dismissed due to Relator's failure to file a Writ of Habeas Corpus.

Section 548.101 RSMo. (1994) provides “ ... if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus.”

Relator has not filed a writ of habeas corpus.

II. Respondent did not err in denying Relator's Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing for the reason that due process does not require Relator to be competent for purposes of the extradition proceeding.

Limited purpose of extradition

Extradition proceedings are intended to be limited in scope in order to facilitate a swift and efficient transfer of custody to the demanding state and to preclude any state from becoming an asylum for a person fleeing justice. Michigan v. Doran, 439 U.S. 282, 288, 99 S. Ct. 530, 58 L. Ed. 2d 521 (1978).

Due Process does not require competency for an extradition hearing

Respondent did not err in denying Relator's request for a competency hearing because due process does not require that a person be competent to proceed with an extradition hearing.

Relator cites no United States Supreme Court or Missouri authority that provides that due process or the Sixth Amendment right to counsel requires a hearing to determine the competency of an accused fugitive in an extradition proceeding.

The only United States Supreme Court case to address this specific issue has held that there is no constitutional right to a competency determination at an extradition hearing. Charlton v. Kelly, 229 U.S. 447, 33 S. Ct. 945, 57 L. Ed. 1274 (1913). In Charlton, the Supreme Court held that the lower court rightfully excluded “impressive evidence” of the accused fugitive’s insanity in an extradition proceeding. The Court concluded that questions of competence, as they relate to criminal responsibility and ability to stand trial, are irrelevant in extradition proceedings and should be determined under the laws of the demanding state.

Numerous jurisdictions have relied upon Charlton in finding that not only does due process not require a determination of competency in an extradition proceeding, it is irrelevant to the proceeding. In the recent case of Lopez-Smith v. Hood, 121 F.3d 1322 (9th Cir. 1997), the Court found that “the rule in Charlton has not been overruled or qualified, and remains binding.” Lopez-Smith, 121 F.3rd at 1324. Accordingly, the Ninth Circuit Court of Appeals affirmed the lower court’s decision to exclude from the extradition hearing expert evidence concerning the accused fugitive’s borderline intelligence, organic brain damage, and substantially impaired

ability to remember facts, give accurate history and to listen to and understand the legal proceedings against him.

In Romeo v. Roache, 820 F.2d 540 (1st Cir. 1987), the subject of an extradition proceeding (Romeo) sought to introduce into evidence a medical report that concluded that the subject suffered from “chronic, psychotic illness of a paranoid nature which *at present* renders him unable to consult with his attorneys with a reasonable degree of rational understanding and which renders him unable to achieve a rational understanding of the proceedings against him.” Romeo, 820 F.2d at 542, (emphasis added). The evaluation specifically addressed the accused fugitive’s present mental status.

Just as Relator now argues, the accused fugitive in Romeo contended that it was a denial of due process to extradite one who could not, because of incompetence, participate in a meaningful fashion in or understand the extradition process. The First Circuit Court of Appeals held that the lower court was correct in excluding the report since competency is irrelevant to the narrow issues to be examined at an extradition hearing and due process does not require such a determination.

Numerous state courts have adopted this same position. In Kellems v. Buchignani, 518 S.W.2d 788 (Ky. App. 1974), the Kentucky Appellate Court held that the question of mental competence is not relevant in extradition proceedings and that the demanding state is the proper authority to hold competency hearings.

In State of Florida ex rel. John W. Buster v. Purdy, 219 So.2d 43 (Fl. App. 1969), the Florida Appellate Court also held that the question of insanity in an extradition proceeding is to be addressed by the demanding, not the asylum, state.

In Brewer v. Turner, 194 P.2d 507 (Ks. 1948), a person who had previously been adjudged insane in another state was also the subject of an extradition hearing in Kansas. The Kansas Supreme Court determined that the asylum state does not have authority to address questions of past or *present* insanity of the subject in an extradition proceeding. Rather, all questions of insanity must be decided by the demanding state.

Similarly, in State ex rel. Davey v. Owen, 12 N.E.2d 144 (Ohio 1937), the Ohio Supreme Court held that a court hearing an application for extradition is not authorized to hear evidence of *present* insanity of the person alleged to be a fugitive.

Right to Counsel

Relator requests that this Court adopt as the standard for extradition hearings the standard for competency found in Dusky v. United States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960), i.e., whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him.

The Dusky position is the standard for competency to stand trial in a criminal prosecution, not an extradition hearing. Extradition proceedings are generally not considered criminal prosecutions. Sabatier v. Dabrowski, 586 F.2d 869 (1st Cir. 1978), Romeo v. Roache, 820 F.2d 540 (1st Cir. 1987); Lopez-Smith v. Hood, 121 F.3d 1322 (9th Cir. 1997).

Relator asserts that the right to counsel in an extradition proceeding would be meaningless unless the defendant is capable of understanding the proceedings and is able to communicate meaningfully with counsel.

Extradition is related to criminal proceedings because it determines where a person will be tried. Yet, there is no rule that everything related to a criminal case is itself a "criminal prosecution" for purposes of the Sixth Amendment. Extradition is a civil proceeding, rather than a criminal

prosecution and is handled under the civil rules. Inasmuch as extradition proceedings are not criminal prosecutions, there is no Sixth Amendment right to counsel. DeSilva v. DiLeonardi, 181 F.3d 865 (7th Cir. 1999); Romeo v. Roache, 820 F.2d 540, 543-44 (1st Cir. 1987); Neely v. Henkel, 180 U.S. 109, 21 S. Ct. 302, 45 L. Ed. 448 (1901).

Due Process does not require a competency hearing in an extradition proceeding where psychologists assessed Relator's competency to stand trial on delinquency charges.

While the trial court did not entertain a competency hearing, it did order the Department of Mental Health to complete a psychological evaluation (Ex. C) and made the psychological evaluation completed by the private psychologist retained by Relator part of the record. (Ex. B). Both psychologists examined Relator to determine his fitness to stand trial, not respond to an extradition request. There is no psychological finding that Relator is not competent to proceed with the very narrow issues addressed at an extradition proceeding.

The court in Romeo noted that the petitioner was not catatonic, had not lost all contact with reality and was not totally unable to communicate. Romeo, 820 F.2d at 544. Romeo's reliance on the doctor's report, the court

held, was misplaced since it only assessed the petitioner's competency to determine whether he was fit to stand trial on criminal charges.

Just as in Romeo, Relator relies on evaluations examining the subject's fitness for prosecution. And just as in Romeo, Relator's condition is not so severe that he is catatonic, not in touch with reality or is totally unable to communicate. Rather, Dr. Carter noted that "there was no evidence that Mr. Reed was suffering from a thought disorder or experiencing psychotic symptoms. He denied experiencing auditory or visual hallucinations. No delusional material was elicited. Although concrete, his thoughts appeared clear and goal oriented" (Ex. C, p. A22); and that he "could relay information to his attorney in a clear manner." (Ex. C, p. A24).

Relator's responses to questions posed by the Department of Mental Health psychologist and the psychologist retained by Relator demonstrate a clear ability to communicate and understand: "he stated that the role of witnesses were to tell his side of the story or to tell the side against me. He stated that if there was something said that was not true at his hearing or that he disagreed with then he should tell the Judge. When asked what the Judges (sic) role was he indicated that the Judge was to "figure out who was lying and who ain't." (Ex. B, p. A14). "When asked what he could do if a witness

lied, Mr. Reed first replied “nothing.” When asked again he noted that he could tell the judge when it was his turn to talk.” (Ex. C, p. A24).

“When questioned about the events pertaining to the alleged offense, Mr. Reed reported that his attorney told him not to discuss this with anyone.” (Ex. C, p. A24). Clearly, Relator has some ability to communicate with his attorney, and understand and follow his attorney’s instructions.

The court in Romeo concluded that, given the limited purpose of extradition proceedings and the tenor of the Charlton case, due process does not require a competency hearing, at least absent a more severe condition than the one described in the doctor’s report. Romeo, 820 F.2d at 544. Certainly, Relator’s condition is less severe than the petitioner’s condition described in Romeo.

Subject of an extradition proceeding has no due process right to a limited competency determination

Relator also contends that due process requires that the subject of an extradition proceeding have sufficient mental competency to consult with and assist his attorney regarding the limited extradition issues of identity and presence. Ex Parte Potter, 21 S.W.3d 290 (Tex. Crim. App. 2000); Oliver v. Barrett, 500 S.E.2d 908 (Ga. 1998).

As previously stated, there is no Missouri or United States Supreme Court authority supporting the proposition that due process requires a determination of either general or limited competence in extradition proceedings.

In Charlton and its progeny, the accused fugitives had varying levels of mental ability at the time of the extradition proceedings. The varying degrees of legal competence, however, did not alter the finding that there is no constitutional right to a competency determination in an extradition proceeding.

While Potter did establish a standard for challenging an extradition in Texas, it should be noted that three judges of the Texas Court of Criminal Appeals dissented. They found the decision of the Texas court to be contrary to the findings of the federal courts that no such constitutional right existed. Judges Mansfield and McCormick agreed with the finding in Kelems v. Buchignani, 518 S.W.2d 788 (Ky. App. 1974), that competence is irrelevant to extradition proceedings and should be addressed in the charging state. Judge Womack adopted the reasoning found in the federal cases in concluding that given the limited purpose of an extradition proceeding, due process does not require a competency determination. Emphasizing the

distinction between competence to stand trial and competence in extradition proceedings, Judge Womack stated:

Today the Court says Charlton v. Kelly need not be considered because the question in that case was “the accused’s present ability to defend against allegations or his insanity at the time of the commission of the crime,” while we are considering “only ... the issue of an accused’s competence to understand the extradition proceedings.” The federal courts have not found this distinction persuasive. Potter, 21 S.W.3d at 299.

Practical consequences of finding Relator not competent

Assuming arguendo that a person does have a due process right to a competency determination in an extradition proceeding, the court in Lopez-Smith raised the practical issue of what should happen to a person who is not competent to participate in an international extradition proceeding. The court noted:

It is conceivable that in some circumstances, a mentally competent accused might be able to help his attorney prevent certification of extraditability, while an incompetent accused could not. But the logic breaks down when we try to determine what would be done with a

person determined to be incompetent. It would not make sense to commit him until he was fit to stand trial ... because the United States would never try him. Nor would it make sense to hospitalize him in the United States until his release would no longer create a substantial risk of injury to persons to damage to property ... because that would ignore the right of another country to try him. Lopez-Smith, 121 F.3d at 1325.

The logic in Lopez-Smith applies to the case at bar, i.e., it would not make sense to commit Relator to the Missouri Department of Mental Health at Missouri taxpayer expense for an indefinite period of time because Missouri can not try the Relator for the Illinois offenses. Theoretically, Illinois may never have an opportunity to try him. More important, the juvenile court does not have jurisdiction to commit the legal custody of Relator to the Missouri Department of Mental Health. In re C.A.D., 995 S.W.2d 21 (Mo. App. W.D. 1999); Section 211.203.3 RSMo. (2000).

III. Respondent did not error in denying Relator's Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing, nor did Respondent violate the Americans with Disabilities Act, for the reason that the Americans with Disabilities Act does not apply to extradition proceedings.

The Americans with Disabilities Act of 1990 (ADA), Title II, prohibits public entities from discriminating on the basis of disability in regards to public services, programs, benefits, and activities. 42 U.S.C. 12131.

Extradition is not a public service, program, benefit or activity of the state, but rather the legal surrender by one state to another of a person accused of an offense in the demanding jurisdiction in accordance with the law. Respondent has complied with the extradition law.

Respondent does not deny that the ADA applies to state jurors and prisoners. Relator has not provided any United States or Missouri authority that the ADA applies to criminal defendants or persons subject to extradition proceedings.

Respondent has not excluded or denied equal services, programs, activities, juvenile court treatment services or residential care to Relator because of any known disability. Respondent has provided Relator with special education services during his pretrial detention at the juvenile court detention center.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Respondent prays this Court to deny Relator's Petition for Writ of Prohibition or in the alternative, Writ of Mandamus, and remand this cause to the trial court for hearing upon the Extradition Warrant issued to the State of Missouri by the State of Illinois.

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Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing Brief was personally delivered to the mailbox of Dan Underwood, Attorney for Relator, 920 North Vandeventer, St. Louis, MO and The Honorable Thomas J. Frawley, Respondent, 920 North Vandeventer, St. Louis, MO this _____ day of May, 2001.

Susan C. Guerra

Certificate of Counsel Pursuant to Special Rule 1(b)

Pursuant to Special Rule No. 1, counsel certifies that this brief complies with the limitations set forth in Special Rule No. 1(b). Based upon the information provided by undersigned counsel's word processing program, Microsoft Word 97, this brief contains 665 lines of text and 3,272 words. Further, a copy of Respondents brief on floppy disk accompanies this written brief and said disk has been scanned for viruses and is virus-free as required by Special Rule 1(f).

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