

IN THE SUPREME COURT
STATE OF MISSOURI

STATE OF MISSOURI)	
ex rel. JOE REED,)	
Relator.)	
)	
v.)	Cause No. SC83408
)	
THE HON. THOMAS J.)	
FRAWLEY,)	
Circuit Judge for St. Louis City,)	
Respondent.)	

ORIGINAL PETITION FOR WRIT OF PROHIBITION OR WRIT OF MANDAMUS
IN THE MISSOURI SUPREME COURT
FROM THE JUVENILE DIVISION OF
THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI
THE HONORABLE THOMAS J. FRAWLEY, JUDGE

RELATOR'S REPLY BRIEF

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INDEX

Table of Authorities	3
Jurisdictional Statement	4
Statement of Facts	4
Points Relied On	
Point I	5
Point II	6
Argument	
Point I	7
Point II	11
Conclusion	14
Certificate of Counsel	16

TABLE OF AUTHORITIES

Cases	Page
<u>Dusky v. United States</u> , 362 U.S. 402, 80 S.Ct. 788, 4 L. Ed. 2d 824 (1960)	5,9
<u>Ex parte Potter</u> , 21 S.W.3d 290, 297 (Tex. Crim. App. 2000)	5, 10
<u>Hogan v. Buerger</u> , 637 S.W.2d 211 (Mo.App.E.D. 1983)	5, 10
<u>In re C.A.D.</u> , 995 S.W.2d 21 (Mo. App.W.D. 1999)	7
<u>Negron v. State of New York</u> , 434 F.2d 386 (2d Cir. 1970)	6, 12, 13
<u>Peeler v. State</u> , 750 S.W.2d 687, 691 (Mo.App.E.D. 1988)	6, 12
<u>University of Alabama v. Garrett</u> , 121 S. Ct. 955, 531 U.S. 356, 148 L. Ed. 2d 866 (2001)	11, 12
 Statutes	
42 U.S.C. § 12131.....	6, 11
Section 476.060 RSMo.	12
Section 548.101, RSMo.	5, 7, 11, 13
 Other Authority	
U.S. Const., Amend. 5.....	5, 7
U.S. Const., Amend. 6.....	5, 7, 12
U.S. Const., Amend. 14.....	5, 7, 12, 13
 Rules	
Mo. Sup. Ct. Rule 84.04(f)	8, 9

JURISDICTIONAL STATEMENT

Relator, Joe Reed, incorporates herein by reference the Jurisdictional Statement from his opening brief as though set out in full.

STATEMENT OF FACTS

Relator, Joe Reed, incorporates herein by reference the Statement of Facts from his opening brief as though set out in full.

POINTS RELIED ON

I. Respondent erred in denying Joe Reed’s Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing in violation of Joe Reed’s rights to due process and effective assistance of counsel as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution by not following Section 548.101, RSMo. (1994), which affords Joe Reed the right to a hearing on his extradition to the State of Illinois and the right to counsel at that hearing. Due process and effective assistance of counsel requires that Joe Reed be able to communicate meaningfully with counsel and have a rational understanding of the extradition proceedings.

Hogan v. Buerger, 647 S.W.2d 211 (Mo.App.E.D. 1983)

Ex parte Potter, 21 S.W.3d 290 (Tex. Crim. App. 2000)

Dusky v. United States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960)

II. Respondent erred in denying Joe Reed's Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing in violation of Joe Reed's rights under the Americans with Disabilities Act. By failing to provide reasonable accommodations for Joe Reed's disability, Respondent excluded Joe Reed from participation in the services, programs and activities of the State of Missouri.

Peeler v. State, 750 S.W.2d 687, 691 (Mo.App.E.D. 1988)

Negron v. State of New York, 434 F.2d 386 (2d Cir. 1970)

42 U.S.C. § 12131

ARGUMENT

I. Respondent erred in denying Joe Reed’s Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing in violation of Joe Reed’s rights to due process and effective assistance of counsel as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution by not following Section 548.101, RSMo. (1994), which affords Joe Reed the right to a hearing on his extradition to the State of Illinois and the right to counsel at that hearing. Due process and effective assistance of counsel requires that Joe Reed be able to communicate meaningfully with counsel and have a rational understanding of the extradition proceedings.

Possible custody of Joe Reed not at issue in the case at bar

Respondent Brief cites In re C.A.D., 995 S.W.2d 21 (Mo. App.W.D. 1999), arguing the possible consequences of finding Joe Reed incompetent. C.A.D. holds that the Missouri Department of Mental Health has no statutory authority to have legal custody of a child. Id. at 31. At this time, Relator neither relies on, nor disputes, the holding of C.A.D.

Respondent’s arguments regarding possible placement or custody of Joe Reed, assuming arguendo he was found to be incompetent for extradition, muddies the issue at bar and raises issues not yet ripe for review. The question before this Court is whether

Joe Reed's right to due process and effective assistance of counsel were violated by Respondent's failure to conduct a competency hearing in this matter.

Joe Reed is not requesting this Court to find him incompetent; he requests that this Court order Respondent to conduct a competency hearing in this matter before ruling on Illinois' extradition warrant. It is possible that, if Respondent were ordered to conduct a competency hearing, Respondent could find Joe Reed competent for extradition purposes, making Respondent's argument moot. It is premature to argue possible placement or custody of Joe Reed until this Court determines whether he is entitled to a competency hearing in this matter.

Respondent argues facts already set forth by Relator and agreed upon by Respondent

Respondent alleges that Joe Reed's responses to questions posed by the Department of Mental Health psychologist (Patricia Carter, Ph.D.) and the psychologist retained by Relator's counsel (Linda Sharpe-Taylor, Ph.D.) demonstrate a clear ability by Joe Reed to communicate and understand. Respondent cites certain responses provided by Joe Reed in interviews conducted by both Dr. Sharpe-Taylor and Dr. Carter. This allegation is contrary to the findings of both psychologists. In their respective reports, Dr. Sharpe-Taylor and Dr. Carter stated, without qualification, that Joe Reed could not assist in his own defense, assist counsel in his defense, or understand the trial process. (Relator's Brief, Ex. B, p. A14; Ex. C, p. A24).

The Statement of Facts contained in Relator's Brief sets forth the findings of the psychological evaluations prepared by Dr. Sharpe-Taylor and Dr. Carter. (Relator's Brief, p. 7). Rule 84.04(f) states that if Respondent is not satisfied with the Statement of

Facts offered by Relator, Respondent shall, in a concise statement, correct any errors contained in Relator's Statement of Facts. Mo. Sup. Ct. Rule 84.04(f). Respondent had an opportunity to correct the Statement of Facts previously offered by Relator but chose to adopt the Relator's statement. (Respondent's Brief, p. 6). Respondent's allegation that Joe Reed can communicate and understand contradicts the facts set forth by Relator and adopted by Respondent without argument.

Present ability to consult with counsel and an understanding of the proceedings should be the required level of competency for extradition

Respondent expresses concern that there is no psychological finding that Joe Reed is not competent to proceed with the very narrow issues addressed at an extradition proceeding. (Respondent's Brief, p. 16). At the time the evaluations were conducted, in July 2000, the only issue before the Family Court of St. Louis City was the Juvenile Officer's Motion to Dismiss to allow prosecution of Joe Reed under the General Laws of the State of Missouri, served on Relator's counsel on June 27, 2000.

Respondent attempts to draw a distinction between competency for extradition and competency in general. Relator's Brief previously discussed the standard for competency to stand trial. (Relator's Brief, p 15, 18). In either proceeding, Joe Reed must have sufficient present ability to consult with counsel and have an understanding of the proceedings. Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L. Ed. 2d 824 (1960).

Hogan v. Buerger, 637 S.W.2d 211 (Mo.App.E.D. 1983), limits the grounds available to challenge extradition as discussed in Relator's Brief (Relator's Brief, p. 12-13). However, this limitation does not effect the level of competency required for an extradition hearing—the alleged fugitive must be sufficiently competent to discuss with counsel the facts relating to the limited grounds available to challenge extradition. Ex parte Potter 21 S.W.3d 290, 297 (Tex. Crim. App. 2000).

For the above-stated reasons, Joe Reed's right to due process and effective assistance of counsel were violated by Respondent. Respondent should have granted Joe Reed's Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing.

II. Respondent erred in denying Joe Reed’s Motion to Stay Family Court from Proceeding with Extradition Hearing and Request for Competency Hearing in violation of Joe Reed’s rights under the Americans with Disabilities Act. By failing to provide reasonable accommodations for Joe Reed’s disability, Respondent excluded Joe Reed from participation in the services, programs and activities of the State of Missouri.

Title II of the ADA unambiguously applies to the State of Missouri

Respondent states that 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. (Respondent’s Brief, p. 22). As previously discussed in Relator’s Brief, Section 548 RSMo., controls extradition, and Section 548.101 provides the alleged fugitive with the right to counsel and the right to a hearing to challenge the extradition. (Relator’s Brief, p. 13-14). The plain language of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq., (hereinafter, “ADA”), states that it applies to any State or local government, any department, agency or other instrumentality of a State or local government. 42 U.S.C. § 12131. As discussed extensively in Relator’s Brief, courts are public entities subject to the provisions of the ADA. (Relator’s Brief, p. 23). Activities of our courts, including an extradition hearing, make them subject to the ADA.

The recent United States Supreme Court decision in University of Alabama v. Garrett, 121 S. Ct. 955, 531 U.S. 356, 148 L. Ed. 2d 866 (2001), striking the applicability of Title I of the ADA to States, does not effect the validity of Title II of the ADA. The

Court stated, in a footnote, that it was not disposed to decide the constitutional issue of whether Title II of the ADA is appropriate legislation under the Fourteenth Amendment. *Id.* at 955 (footnote 1). Respondent has cited to no United States or Missouri authority to rebut the plain language of Title II of the ADA that it applies to State or local government instrumentalities.

Reasonable accommodations sought by Joe Reed are akin to providing translation during trial

Joe Reed seeks reasonable accommodations from Respondent analogous to the accommodations made to individuals requiring interpreters or translators to participate in a trial. Courts may appoint interpreters and translators to interpret the testimony of witnesses, and to translate any writing necessary to be translated in such court. Section 476.060 RSMo.

In reviewing the failure of trial counsel to request an interpreter for a defendant with a hearing impairment, the Eastern District Court of Appeals held that the trial counsel was ineffective and his failure resulted in a conviction that was constitutionally infirm. Peeler v. State, 750 S.W.2d 687, 691 (Mo.App.E.D. 1988). The court determined that the failure to provide an interpreter or translator for a hearing-impaired defendant was similar to cases involving a non-English speaking defendant. *Id.* at 690.

The court cited Negron v. State of New York, 434 F.2d 386 (2d Cir. 1970), where the trial court failed to provide for translation of testimony from English to Spanish in violation of the Spanish speaking defendant's Sixth Amendment rights. At trial, twelve of the fourteen witnesses testified in English; the only translator available to Negron was

one employed by the prosecution who provided summaries of the proceedings to him during two breaks in a four-day trial. Id. at 388. Negron's trial lacked the basic and fundamental fairness required by the due process clause of the Fourteenth Amendment. Id. at 389. The integrity of the fact-finding process, and the potency of our adversary system of justice forbid the prosecution of a defendant who is not present at his own trial. Id. at 389. Negron deserved more than to sit in total incomprehension as the trial proceeded. Id. at 390.

Without requiring Respondent to ensure Joe Reed's understanding of the extradition hearing and his ability to consult with counsel, Joe Reed is threatened with the possibility of sitting through his extradition hearing in total incomprehension. Extradition is more than a legal surrender; there are procedures that must be followed, pursuant to Section 548.101, RSMo., to ensure the protection of Joe Reed's rights.

Missouri courts must make reasonable accommodations to Joe Reed, pursuant to the ADA, before attempting to extradite him to the State of Illinois. A competency hearing to determine his ability to participate in his defense of the extradition hearing is a reasonable accommodation.

For the above-stated reasons, a determination of Joe Reed's competency is required to reasonably accommodate his disability under the ADA before the Respondent, the Honorable Thomas J. Frawley, conducts any further proceedings on the requested extradition to the State of Illinois.

III. CONCLUSION

WHEREFORE, for the reasons set forth in Points I and II of this brief, Relator, Joe Reed, prays this Honorable Court to issue a permanent Writ of Prohibition, or in the alternative, permanent Writ of Mandamus in Cause No. JU005-0541, in the Family Court of St. Louis City. Relator, Joe Reed, moves this Court to issue a permanent writ ordering the Respondent, the Honorable Thomas J. Frawley, to grant him a competency hearing prior to conducting an extradition hearing in this matter or, in the alternative, issue a writ prohibiting the Honorable Thomas J. Frawley from conducting an extradition hearing regarding Joe Reed until Respondent makes a determination of Joe Reed's competency.

Relator, Joe Reed, further prays this Honorable Court provide an opportunity for oral arguments in support of a permanent Writ of Prohibition or, in the alternative, permanent Writ of Mandamus.

Respectfully submitted,

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Certificate of Service

I certify that a true copy of the above and foregoing was personally served on all of the following parties this _____ day of May, 2001.

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Certificate of Counsel Pursuant to Special Rule 1(b)

Pursuant to Special Rule No. 1, counsel certifies that this brief complies with the limitations contained in Special Rule No. 1(b). Based upon the information provided by undersigned counsel's word processing program, Microsoft Word 2000, this brief contains 351 lines of text and 2,578 words. Further, a copy of Relator's brief on floppy disk accompanies his written brief and that disk has been scanned for viruses and is virus-free as required by Special Rule 1(f).

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