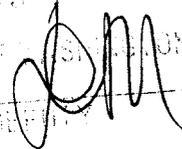


FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY 

NO. 37789-6-II
Clark County No. 07-2-07879-1

GARY LUCAS,

Respondent,

vs.

HENRY J. PRIEN

Appellant.

BRIEF OF APPELLANT

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P.M. 2-10-2009

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A. ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED WHEN IT DENIED MR. PRIEN'S HABEUS CORPUS PETITION.

II. THE CASE IS NOT MOOT.

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

I. THE TRIAL COURT SHOULD HAVE GRANTED THE HABEUS CORPUS PETITION WHERE THE APPLICATION FOR REQUISITION IDENTIFIED A DIFFERENT PERSON THAN MR. PRIEN IN IT'S HEADING.

II. ALTHOUGH MR. PRIEN HAS BEEN RETURNED TO IDAHO, THIS CASE IS NOT MOOT BECAUSE THIS ISSUE IS ONE OF SUBSTANTIAL PUBLIC INTEREST.

C. STATEMENT OF THE CASE

The state of Idaho sought extradition of Appellant Henry J. Prien on a warrant for a parole violation. CP 3-5. Attached to the warrant was an application for requisition. CP 8-11. Beginning on the second page of the application, the name that appears in the heading of the document is Dustyn M. Reinardy, with and Idaho Department of Corrections (IDOC) number 65675. CP 9-11. Mr. Prien's IDOC number is 68313. CP 3. Mr. Prien's name appears in the body of the text on these pages, although his IDOC number does not. CP 9-11. Mr. Prien filed a petition for writ of habeas corpus, alleging the Governor's Warrant was defective because (1) the warrant did not have the original signature of the Governor of Idaho;

and (2) the application of requisition pertained to Dustyn M. Reinardy, IDOC #65675. CP 1. Mr. Prien argued in his petition that the warrant did not meet the requirements of RCW 10.88.222¹ because it did not accurately describe the defendant. CP 1. The court denied the petition. CP 48. Mr. Prien filed a timely notice of appeal. CP 49.

D. ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING THE PETITION WHERE THE APPLICATION FOR REQUISITION RENDERED THE GOVERNOR'S WARRANT DEFECTIVE.

RCW 10.88 is Washington's codification of the Uniform Criminal Extradition Act. *White v. King County*, 109 Wn.2d 777, 780, 748 P.2d 616 (1988). RCW 10.88.220 provides:

RCW 10.88.220 No demand for the extradition of a person charged with crime in another....

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under RCW 10.88.250, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of

¹ Presumably, Mr. Prien's counsel was referring to RCW 10.88.220.

his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be certified or authenticated by the executive authority making the demand.

RCW 10.88.220.

On a petition for habeas corpus, “[t]he court ‘can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive.’” *White* at 781, citing *Michigan v. Doran*, 439 U.S. 282, 288, 99 S.Ct. 530 (1978). Once the governor of the asylum state has granted extradition, the court may only consider the facial validity of the extradition documents. *State v. Hershey*, 31 Wn.App. 366, 370, 641 P.2d 1201 (1982).

Here, the document known as the application for requisition is facially invalid because the person named in the caption of the document is not the Appellant, Henry J. Prien. CP 9-11. Further, the IDOC number in the caption of this document is 65675 while Mr. Prien’s IDOC number is 68313. Because the application for requisition was defective in that it failed to properly identify Mr. Prien by correct name and IDOC number, the trial court could not have properly concluded that the petitioner Henry

Prien was the person named in the request for extradition. The trial court erred in denying the petition for habeas corpus.

II. ALTHOUGH MR. PRIEN HAS BEEN RETURNED TO IDAHO, THIS CASE IS NOT MOOT BECAUSE THIS ISSUE IS ONE OF SUBSTANTIAL PUBLIC INTEREST.

Mr. Prien has been returned to Idaho on the warrant that underlies this case. The State will likely argue this case is moot. However, a court can consider a case that is moot where the issue is of a public nature, will likely recur, and requires an authoritative determination to provide guidance to public officers. *Detention of McLaughlin*, 100 Wn.2d 832, 838, 676 P.2d 444 (1984). In *Bellevue School Dist. v. E.S.*, #60528-3-I (Jan. 12, 2009), Division One held that the truancy issue in that case was not moot because the issue was certain to recur and, given the timelines involved in such a case, “equally certain to evade review.” *E.S.* at page 6. Such is the case here. Because the denial of a petition for habeas corpus results in the suspected fugitive being sent from the asylum state to the requesting state, review would never occur where the State is able to preclude it by pointing out that the Appellant is no longer present in Washington. This court should not decline to review this case on the basis that it’s moot.

E. CONCLUSION

The trial court should be reversed.

RESPECTFULLY SUBMITTED this 10th day of February, 2009.



ANNE M. CRUSER, WSBA #27944
Attorney for Mr. Prien

APPENDIX

RCW 10.88.220 No demand for the extradition of a person charged with crime in another....

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under RCW 10.88.250, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be certified or authenticated by the executive authority making the demand.

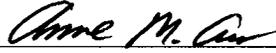
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Mr. Henry J. Prien
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Boise, ID 83707

and that said envelope contained the following:

- (1) BRIEF OF APPELLANT
- (2) RAP 10.10 (TO MR. PRIEN)
- (3) VRP (TO MR. CURTIS)
- (4) AFFIDAVIT OF MAILING

Dated this 10th day of February, 2009.


 ANNE M. CRUSER, WSBA #27944
 Attorney for Appellant

I, ANNE M. CRUSER, certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Date and Place: Feb. 10, 2009, Kalama, WA

Signature: Anne M. Cruser