

COURTS, DISTRICT - Upon waiver of extradition, state district courts retain jurisdiction only to effect transport of the fugitive;

CRIMINAL LAW AND PROCEDURE - a fugitive prisoner, after waiver of extradition, is not entitled to bail; state district courts retain jurisdiction only to effect transport;

EXTRADITION - a fugitive prisoner, after waiver of extradition, is not entitled to bail; state district courts retain jurisdiction only to effect transport;

JURISDICTION - Upon waiver of extradition, state district courts retain jurisdiction only to effect transport of the fugitive;

MONTANA CODE ANNOTATED - Title 46, chapter 30; sections 46-30-101 to -413, -303;

UNITED STATES CODE - Title 18, section 3182 (1976);

UNITED STATES CONSTITUTION - Article IV, section 2, clause 2.

- HELD:
1. A fugitive prisoner, after waiver of extradition, is not entitled to bail under the Uniform Criminal Extradition Act as set forth in Mont. Code Ann. tit. 46, ch. 30.
 2. Upon waiver of extradition, our state district courts retain jurisdiction only to effect transport of the fugitive.

July 19, 2004

Ms. Cyndee L. Peterson
Hill County Attorney
County Courthouse
315 Fourth Street
Havre, MT 59501-3923

Dear Ms. Peterson:

You have requested my opinion concerning the following questions:

1. Is a fugitive prisoner, after waiver of extradition, entitled to bail under the Uniform Criminal Extradition Act as set forth in Mont. Code Ann. Title 46, Chapter 30?

Ms. Cyndee L. Peterson
July 19, 2004
Page 2

2. Does our state district court retain jurisdiction over a fugitive prisoner after the prisoner has waived extradition?

The right of extradition is set forth in article IV, section 2, clause 2 of the United States Constitution. Congress has implemented this constitutional provision in 18 U.S.C. § 3182 (1976). Further, the State of Montana has adopted the Uniform Criminal Extradition Act (Act), Mont. Code Ann. § 46-30-101 through -413.

The intent of the extradition clause to the United States Constitution is to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense occurred. Bazaldua v. Hanrahan, 592 P.2d 512 (N.M. 1979). The purpose of the clause is to prevent any state from becoming a sanctuary for fugitives from justice of another state. Id.

Under the Act, bail is allowed during the period *before* a governor's extradition warrant has been served. Mont. Code Ann. § 46-30-303. However, there is no provision for bail *after* an arrest on a governor's extradition warrant. There is also no provision for bail upon waiver of extradition.

Although Montana has not had occasion to interpret whether bail is afforded under these circumstances, a number of other states have examined the issue of whether bail must be afforded *after* an arrest on an extradition warrant. If a prisoner waives extradition, a governor's extradition warrant is unnecessary. Thus, the analysis regarding whether bail should be afforded is the same whether on a governor's extradition warrant or upon waiver of extradition, since the detainee is in the same position: awaiting transport to the extraditing state.

The majority rule is that there is *no* right to bail after an arrest on a governor's extradition warrant. State v. Jacobson, 526 P.2d 784 (Ariz. App. 1974); Deas v. Weinshienk, 533 P.2d 496 (Colo. 1975); Grano v. State, 257 A.2d 768 (Del. 1969); Buchanan v. State, 166 So. 2d 596 (Fla. Dist. Ct. App. 1964); State v. Second Judicial Dist. Court, 471 P.2d 224 (Nev. 1970), cert denied, 401 U.S. 910 (1971); State v. Pritchett, 530 P.2d 1348 (Wash. App. 1975).

A minority of states allow bail to be set after an arrest on a governor's extradition warrant. Winnick v. Reilly, 123 A. 440 (Conn. 1924); Application of Haney, 289 P.2d 945 (Idaho 1955). However, I decline to follow the minority view and accept the majority view.

Ms. Cyndee L. Peterson
July 19, 2004
Page 3

The rationale for accepting the majority view is that: “Because the fugitive is being held for another state he should be readily available to be turned over to those who arrive to return him.” Deas v. Winshienk, 533 P.2d at 497. Denial of bail pending extradition is based upon the presumption that the detainee will be promptly extradited and provided his legal right to bail in the demanding state. Meechaicum v. Fountain, 696 F.2d 790, 792 (10th Cir. 1983).

Therefore, it is my opinion:

1. A fugitive prisoner, after waiver of extradition, is not entitled to bail under the Uniform Criminal Extradition Act as set forth in Mont. Code Ann. tit. 46, ch. 30.
2. Upon waiver of extradition, our state district courts retain jurisdiction only to effect transport of the fugitive.

Very truly yours,

MIKE MCGRATH
Attorney General

mm/pdb/jym