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SPRINGFIELD

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FILE NO. 84-005

CRIMINAL LAW AND PROCEDURE:
Waivers of Extradition

Honorable William A. Schuwerk, Jr.
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Chester, Illinois 62233-0368

Dear Mr. Schuwerk:

I have your letter in which you request an opinion regarding the validity of advance or pre-release waivers of extradition under the Uniform Criminal Extradition Act (Ill. Rev. Stat. 1981, ch. 60, par. 18 et seq.). Specifically, you ask whether a waiver of extradition executed by a parolee as a condition precedent to his release from a penitentiary of another State, in which the parolee waives any right to extradition proceedings if found in any other State without permission during the term of his parole, constitutes a valid

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waiver of the statutory extradition procedures afforded to a fugitive from justice under the Uniform Criminal Extradition Act. For the reasons hereinafter stated, it is my opinion that pre-release waivers of extradition, which waive all rights to extradition proceedings upon stated conditions, are valid and may be given effect in accordance with their terms.

In your letter you describe the circumstances which have prompted your inquiry. You state that an individual was arrested as a fugitive from justice and placed in custody in the Randolph County jail pursuant to a warrant of arrest, but prior to the issuance of a Governor's warrant of arrest. The individual was alleged to have violated the conditions of a work release program to which he was admitted while serving a 30-year sentence for armed robbery in the Mississippi State Penitentiary. The Mississippi Department of Corrections requested his return and furnished you with a copy of a notarized waiver of extradition which the individual executed in consideration of his release to the work release program. The executed waiver of extradition provides:

"I, [prisoner], an inmate of the Mississippi State Penitentiary, in consideration of my release on this date to the Work Release Program, executed by the authority of this state, granting unto me the right to participate in the Work Release Program and having accepted said requirements of the Work Release Program with the understanding that should I leave without permission my designated position as assigned by the Work Release Program, I will be considered an escapee from said Penitentiary, and with the further condition

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that if I should be found in another state without permission, I will waive extradition.

I do hereby waive all of my rights to demand the issuance and service of a warrant of extradition and to apply for writ of habeas corpus and waive the issuance and service of all extradition proceedings and I will freely and voluntarily return to the State of Mississippi accompanied by any peace officer or penitentiary guard thereof for the purpose of serving the remainder of my sentence or to answer any pending criminal charge against me on account of my being an escapee from said penitentiary."

From the documents which you supplied with your letter, it is apparent that the work release program to which the alleged fugitive was admitted by the Mississippi Department of Corrections was a form of parole, and further, that under the terms of the parole instrument the individual was prohibited from leaving the State of Mississippi without permission. His unauthorized absence constituted a violation of his parole.

The rights and basic procedures of interstate extradition of fugitives are created and controlled by section 2 of article IV of the United States Constitution (U.S. Const., art. IV, § 2), together with the Federal statutes implementing this constitutional provision. (People ex rel. Hackler v. Lohman (1959), 17 Ill. 2d 78, 83, cert. denied, 361 U.S. 963 (1960).) It is recognized, however, that the States may enact legislation ancillary to and in aid of this provision of the United States Constitution and its supplementary Federal legislation, if the State legislation does not conflict with the intent and

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meaning of the Federal provisions. People ex rel. Millet v. Babb (1953), 1 Ill. 2d 191, 196-97.

The Uniform Criminal Extradition Act creates specific executive and judicial procedures which relate to the extradition of fugitives from justice both to and from this State. Section 2 of the Uniform Criminal Extradition Act (Ill. Rev. Stat. 1981, ch. 60, par. 19) provides:

"Fugitives from Justice: Duty of Governor. Subject to the provisions of this Act, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the Executive Authority of any other state of the United States any person charged in that State with treason, felony, or other crime, who has fled from justice and is found in this State."

With regard to the extradition of parole violators, the supreme court has stated:

" * * *

* * * In People ex rel. Westbrook v. O'Neill, 378 Ill. 324, at page 327, we said, 'That a convict who is released from prison on parole and violates the terms of his parole may be extradited from another State as a fugitive from justice has been established in a long line of cases commencing with Hughes v. Pflanz, 71 C.C.A. 234, 138 Fed. 980.' A person remains charged with a crime within the meaning of the constitutional and statutory provisions although he has been convicted, so long as the judgment of conviction remains unsatisfied. [Citations.]

* * *

(People ex rel. Holmes v. Babb (1953), 414 Ill. 490, 494.) "

Sections 7, 8 and 9 of the Uniform Criminal Extradition Act (Ill. Rev. Stat. 1981, ch. 60, pars. 24, 25, 26) provide for the issuance and execution of a Governor's warrant of arrest. Section 10 of the Uniform Criminal Extradition Act (Ill. Rev. Stat. 1981, ch. 60, par. 27) provides that no person arrested upon a Governor's warrant may be released to the authorities of the demanding State unless he is first afforded a hearing and an opportunity to apply for relief by writ of habeas corpus. Section 11 of the Uniform Criminal Extradition Act (Ill. Rev. Stat. 1981, ch. 60, par. 28) provides that any officer who willfully delivers a person in his custody under a Governor's warrant to an agent of the demanding State, without complying with section 10 of the Act, shall be guilty of a Class B misdemeanor. Sections 13 through 18 of the Uniform Criminal Extradition Act (Ill. Rev. Stat. 1981, ch. 60, pars. 30-35) govern the arrest and commitment of a fugitive from justice pending the issuance of a Governor's warrant of arrest.

The Act also provides, however, that a fugitive from justice may waive any right to extradition proceedings. Section 26 of the Act (Ill. Rev. Stat. 1979, ch. 60, par. 43) provides:

"Written waiver of Extradition Proceedings. Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in Sections 7

and 8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of the circuit court a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a relief by habeas corpus as provided for in Section 10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this State and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this Section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this State." (Emphasis added.)

Section 26 of the Act is a substantially verbatim adoption of section 25A of the Model Uniform Criminal Extradition Act (U.L.A., vol. 11, Uniform Criminal Extradition Act, § 25A (1974)).

No Illinois appellate or supreme court decision has directly addressed the validity of pre-release waivers of extradition under the terms of the Uniform Criminal Extradition Act. (But cf., People ex rel Richeson v. Twomey (1972), 4 Ill. App. 3d 859, 860-61, in which the court tacitly acknowledged that a waiver of extradition executed by an Illinois parolee as

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a condition of his parole was sufficient to permit his removal from any State upon violation of the terms of his parole.) It is generally recognized, however, that parole is an act of grace, and reasonable conditions, including the requirement that a parolee execute a waiver of extradition, may be imposed in connection therewith. (Forester v. California Adult Authority (8th Cir. 1975), 510 F.2d 58, 61.) The weight of authority favors the validity of pre-release waivers of extradition executed as a condition of parole. See Pierson v. Grant (8th Cir. 1975), 527 F.2d 161; Forester v. California Adult Authority (8th Cir. 1975), 510 F.2d 58; Cook v. Kern (5th Cir. 1964), 330 F.2d 1003; Woods v. Steiner (D.C. Md. 1962), 207 F.Supp. 945; White v. Hall (Ct. App. Md. 1972), 291 A.2d 694; Ex Parte Williams (Ct. App. Tex. 1971), 472 S.W.2d 779; Wright v. Page (Ct. App. Okla. 1966), 414 P.2d 570; Hunt v. Hand (S.Ct. Kan. 1960), 352 P.2d 1.

Thus, in Cook v. Kern (5th Cir. 1964), 330 F.2d 1003, the appellant was taken into custody in Texas on a warrant of arrest, issued by the Illinois State Penitentiary, in which the appellant was accused of violating his parole. The appellant had executed a waiver of extradition as a condition of his release on parole, which provided in part:

"

* * *

'* * * I promise to abide by several parole conditions, in one of which I agree to waive the

rights to extradition proceedings if I am found as a defaulter in any state of the union. In compliance with this agreement I HEREBY CERTIFY that if found to be a defaulter in any state I freely and voluntarily agree to accompany any Illinois messenger as a prisoner to the State of Illinois for the purpose of serving my unexpired sentence in the Illinois State Penitentiary. FURTHERMORE, I hereby waive any and all formality in connection with my said return, * * *." (Cook v. Kern (5th Cir. 1964), 330 F.2d 1003, 1004, n.2.)

The appellant sought the issuance of a writ of habeas corpus, contending that by honoring the waiver of extradition the State of Texas would deprive him of his fundamental constitutional rights. In affirming the denial of the writ by the district court, the appellate court held:

" * * *

Whatever the benefits appellant might have enjoyed under the Texas Extradition Statute, he has not been deprived of a federally protected right; therefore, the writ was properly denied. [Citations.] Moreover, even assuming that a constitutional right were involved, appellant's parole agreement constitutes a sufficient waiver. In United States ex rel. Simmons on Behalf of Gray v. Lohman, [(7th Cir. 1955), 228 F.2d 824], the Court of Appeals said:

'* * * [h]aving entered into such [parole] agreement, it is not discernible how or in what manner his constitutional rights are violated when it is sought, upon a violation, to obtain his return. Assuming, however, contrary to what we think, that any constitutional right is involved, it is waived by the agreement which the parolee makes with the State.' 228 F.2d at 826." (Emphasis added.) (Cook v. Kern (5th Cir. 1964), 330 F.2d 1003, 1004.)

(For the current application of 42 U.S.C. § 1983 to extradition cases, however, see McBride v. Soos (7th Cir. 1982), 679 F.2d 1223; Brown v. Nutsch (8th Cir. 1980), 619 F.2d 758.)

In Pierson v. Grant (8th Cir. 1975), 527 F.2d 161, 164, the court addressed the validity of pre-release waivers of extradition under section 25A of the Model Uniform Criminal Extradition Act, as adopted by Missouri and Iowa:

" * * *

Appellant argues that in order for a waiver of extradition to be valid there must be compliance with the procedures set forth in Section 25-A of the UCEA. That section provides that a person may waive the extradition procedures provided for in the UCEA if such waiver is made in the presence of a judge and if the judge has informed the person of his rights under the Act. Appellant contends that, absent other statutory provisions on waiver, this section provides the exclusive method of waiver; and thus, since there was admittedly no compliance with the UCEA procedures, the waiver was invalid as a matter of law.

However, Section 25-A contains the following proviso:

[P]rovided, however, that nothing in this Section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state. (Emphasis added)

Advance waivers of extradition in circumstances similar to those of this case have been upheld in a number of cases. [Citations.] We find no basis for concluding that a pre-release waiver of extradition executed as a condition of parole must conform to a procedure which by its own terms is non-exclusive.

* * *

Identical language to that relied upon by the court in its holding in Pierson v. Grant is contained in section 26 of the Uniform Criminal Extradition Act.

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In Pierson v. Grant (8th Cir. 1975), 527 F.2d 161, the court also addressed two other challenges to the validity of a pre-release waiver of extradition executed as a condition of parole. The court stated therein, at pages 164-65:

" * * *

Appellant contends that the waiver of extradition was involuntary since he was told that he would not be released on parole unless he signed the waiver. This Court has recently observed that parole is an act of grace and has held that boards of parole have wide discretion to impose reasonable conditions in connection with parole. Forester v. California Adult Authority, supra, 510 F.2d at 61. Requiring the execution of a waiver of extradition as a condition precedent to parole does not render the waiver involuntary without a specific showing of how such a condition was coercive as applied in the particular case. Id. * * *

Appellant also argues that the state should be required to show that the waiver was knowingly made after the appellant was specifically advised as to the various rights under the UCEA which he would surrender in his waiver. * * * The District Court held that 'it is sufficient if [appellant] knew generally that he could require the state to undergo formal procedures to effect his return and chose to give this up and that there is no requirement that he specifically be advised of these procedures.' We agree with the District Court that the waiver of extradition was knowing if at the time it was signed the appellant had a general knowledge and understanding of what was involved in the waiver. * * *

* * *

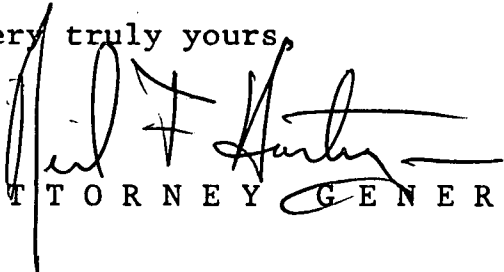
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Based upon my review of the provisions of the Uniform Criminal Extradition Act, and the reasoning of the cases cited above, it is my opinion that a pre-release waiver of extradition executed as a condition of parole in another State is

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valid and effective under section 26 of the Uniform Criminal Extradition Act to waive any and all rights to statutory extradition proceedings otherwise provided by this State, and may be given effect in accordance with its terms. Such waivers need not be executed in the form and manner specified in the first paragraph of section 26 of the Uniform Criminal Extradition Act. The delivery of an arrested person to the agents of the demanding State pursuant to the terms of a pre-release waiver of extradition does not constitute a violation of section 11 of the Act.

Very truly yours,



A T T O R N E Y G E N E R A L