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Opinion No. 04-117

Admission to Bail after Waiver of Extradition

QUESTION

Is a fugitive from justice entitled to admission to bail after the fugitive has waived extradition and while the fugitive is awaiting the arrival of officers of the demanding state?

OPINION

No. In Tennessee, a fugitive from justice is not entitled to admission to bail after waiving extradition. It is the opinion of this office that a waiver of extradition terminates the extradition process and thereby terminates the right to bail.

ANALYSIS

A fugitive from justice has both a constitutional right and a statutory right to admission to bail pending completion of the extradition process. The Tennessee Constitution provides “[t]hat all prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident, or the presumption great.” Tenn. Const., art. I, § 15. “Under the foregoing constitutional provision [a prisoner] is entitled to bail as a matter of right” in all except capital cases. *Wallace v. State*, 193 Tenn. 182, 245 S.W.2d 192, 193 (1952). Similarly, the Uniform Criminal Extradition Act provides:

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, the judge or magistrate must admit the person to bail by bond or undertaking, with sufficient sureties, and in such sum as the judge or magistrate deems proper, for the person’s appearance before the judge or magistrate at a time specified in such bond or undertaking, and for the person’s surrender, to be arrested upon the warrant of the governor of this state.

Tenn. Code Ann. § 40-9-106. However, neither the constitutional right nor the statutory right extends to a fugitive from justice who has waived extradition.

Extradition is a process whereby fugitives from justice are returned by the asylum state to the demanding state to stand trial on pending criminal charges. *See generally de la Beckwith v. Evatt*, 819 S.W.2d 453, 455 (Tenn. Crim. App. 1991). The extradition process generally begins when the fugitive is arrested in the asylum state as a result of criminal charges in the demanding state. *Id.*; *see* Tenn. Code Ann. §§ 40-9-103 and 40-9-401. If the fugitive does not waive extradition, the extradition process continues and the fugitive is taken before a magistrate, where the fugitive is either committed to jail or admitted to bail. Tenn. Code Ann. §§ 40-9-105, -106; *de la Beckwith*, 819 S.W.2d at 455. Then the magistrate establishes a time in which the demanding state may arrest the fugitive. Tenn. Code Ann. §§ 40-9-106, -108. “Upon notification by the authorities in the asylum state that the accused refuses to waive extradition, the demanding state submits formal documents requesting the governor of this state to issue a requisition [warrant] and agent’s commission.” *de la Beckwith*, 819 S.W.2d at 455-56; Tenn. Code Ann. §§ 40-9-110, 112. If the demanding state’s request is approved, the governor issues his rendition warrant, which authorizes the arrest of the fugitive and the delivery of the fugitive to the agents of the demanding state. Tenn. Code Ann. §§ 40-9-116, -118. When the fugitive is arrested on the governor’s rendition warrant, the fugitive has a right to challenge the extradition in a habeas corpus proceeding. Tenn. Code Ann. § 40-9-119. However, the right to bail terminates upon issuance of the governor’s rendition warrant. *Elliott v. Johnson*, 816 S.W.2d 332, 337 (Tenn. Crim. App. 1991).

Under the express terms of the bail provision of the Extradition Act, admission to bail is only authorized during the extradition process and terminates upon the conclusion of that process when the governor’s rendition warrant is issued. Tenn. Code Ann. § 40-9-106, -116. Similarly, the right to admission to bail terminates when the extradition process terminates through execution of a waiver. *See Elliott v. Johnson*, 816 S.W.2d 332, 336 (Tenn. Crim. App. 1991) (noting that bail is only available during an extradition proceeding if there is no waiver). This is the necessary result because, in the case of a fugitive who has waived extradition, there will be no subsequent “appearance before the judge or magistrate at a time specified,” there will be no occasion for the prisoner to “be arrested upon the warrant of the governor of this state,” and there will be no governor’s warrant. *See* Tenn. Code Ann. § 40-9-106, -116. Moreover, because of the waiver of extradition, the fugitive does not have a right to habeas corpus review. *See* Tenn. Code Ann. § 40-9-119. Thus, the right to admission to bail is intrinsically linked to the invocation of the extradition process. In other words, the right to admission to bail terminates upon waiver of the extradition process.

Furthermore, Article IV, Section 2, Clause 2, of the United States Constitution places an affirmative duty on the governor of the asylum state to return fugitives from justice upon proper demand of the executive authority of the demanding state. If a fugitive is out on bail after waiving extradition, the governor may be unable to meet his constitutional obligation to deliver the fugitive when the demanding state’s agents arrive. *See* Tenn. Code Ann. § 40-9-109; *see Mandina v. State*, 749 S.W.2d 472, 474 (Tenn. Crim. App. 1986) (“The enforcement of a forfeited bond would not meet the requirements placed on the executive of the asylum state”).

Accordingly, it is the opinion of this office that the constitutional and statutory right to bail in an extradition proceeding terminates upon the execution of a waiver of the extradition process.

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