

The State of South Carolina



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January 13, 1986

The Honorable Ira Reiner
District Attorney for the County of
Los Angeles
210 West Temple Street, Suite 18-709
Los Angeles, California 90012

Dear Mr. Reiner:

Referencing the request by the State of South Carolina that Mitchell C. Sims and Ruby Padgett be returned to this State for trial prior to being tried by the State of California, the question has been raised as to the applicability of a prior opinion of this Office, dated June 25, 1958 to such request. The opinion dealt with the question of whether a prisoner, after having been convicted and sentenced in this State, may be extradited to another state for trial or to satisfy a sentence pending in the demanding state. The opinion citing Opinion of the Justices, 201 Mass. 609, 89 N.E. 174 (Mass. 1909) concluded that the Governor of this State has no legal authority to order a prisoner extradited to a demanding state prior to the completion of the sentence being served in this State.

I would advise that the above conclusion no longer reflects the opinion of this Office. In Scott v. MacDougall, 246 S.C. 252, 143 S.E.2d 457 (1965) the South Carolina Supreme Court stated:

"(t)he power of a state to waive temporarily its strict right to exclusive custody of one confined for violation of its laws in order that another state may subject him to trial for a crime against it is a power inherent in sovereignty...." 143 S.E.2d at 458-459.

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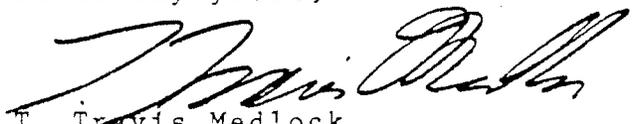
In such decision the Court determined that the release of a South Carolina prisoner to another state for trial, which was conditioned upon return of the prisoner to this State for completion of the sentence received in this State, was proper and did not entitle the prisoner to the habeas corpus relief sought. In his brief, the prisoner had referenced the 1958 opinion of this Office cited above in support of his position that he was entitled to be released by South Carolina authorities.

The decision by this State's Supreme Court is consistent with decisions reached by other courts. See: Walsh v. State ex rel. Eyman, 450 P.2d 392 (Ariz. 1969); Murphy v. Maxwell, 199 N.E.2d 597 (Ohio, 1964). Helm v. Jago, 363 N.E.2d 1196 (Ohio, 1977). Also, in another opinion dated April 7, 1959, former Attorney General McLeod recognized that the conclusion of the prior opinion referenced above was the minority position. See also: Opinion dated February 15, 1968 approving the transfer of a South Carolina prisoner to Florida for trial in that State "...with the specific understanding that he be returned to this State immediately after trial for completion of the service of his sentence here."; In re Ierardi, 321 N.E.2d 921 (Mass., 1975) which recognized that Opinion of the Justices, supra, "would not be followed today"; the Interstate Agreement on Detainers, codified in this State as Section 17-11-10 et seq. of the Code of Laws of South Carolina, 1976 which would also permit the temporary transfer of a prisoner serving a term of imprisonment in this State for trial in another state.

Referencing the above, if the State of California permits the transfer of Mitchell C. Sims and Ruby Padgett to South Carolina for trial, there would be no bar to South Carolina later surrendering custody temporarily in order that Sims and Padgett be returned to California for trial even though any sentence received in South Carolina would not have been completed. In our judgment, such temporary transfer would not be tantamount to a pardon. The State of California, by returning Sims and Padgett to South Carolina for trial, would not pursuant to South Carolina law, waive its right to have him returned later to California for trial.

Therefore, I respectfully request your considering a recommendation to Governor Deukmejian that Mitchell C. Sims and Ruby Padgett be returned immediately to this State for trial prior to being tried by the State of California.

Sincerely yours,



T. Travis Medlock
ATTORNEY GENERAL OF SOUTH CAROLINA