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January 22, 1990

David P. Schwacke, Esquire
Deputy Solicitor
Ninth Judicial Circuit
P. O. Box 58
Charleston, SC 29402-0058

Dear Mr. Schwacke:

You asked three (3) questions in which you stated you had had differing results depending on the presiding judge who handled the matter. This opinion solely seeks to set forth the general law as questioned, and does not address any particular case or court's ruling. First, you asked whether there exists any specific formalities for the advisement of rights or oath for extradition waivers. A fugitive may be preliminarily detained in South Carolina before the demanding state makes a formal requisition demand pursuant to §17-9-10 of the South Carolina Code Ann. (1976). Under that statute, a fugitive may be arrested and detained pending the arrival of a requisition demand upon reasonable belief that the fugitive is charged with a crime in another state. A fugitive thereafter may waive his right to resist extradition. 35 C.J.S., Extradition, §10(a) (1960). An extradition waiver concedes that the fugitive is the individual sought in the demanding state, thereby obviating the need for the demanding state sending the requisition paperwork. State v. Zylstra, 263 N.W.2d 529 (1976). Therefore, when a fugitive waives extradition, he waives his constitutional due process right to have the demanding state make a formal demand for his extradition.

Clearly constitutional rights can be waived. See, Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). There are no specific formalities attendant to a valid waiver of extradition such as the requirement that a waiver be made under oath or affirmation. In State v. Patterson, 278 S.C. 319, 295 S.E.2d 264, Appeal after Remand, 327 S.E.2d 650, 285 S.C. 5, cert. den., 471 U.S. 1036, 105 S.Ct. 2056, 85 L.Ed.2d 829 (1982), the South Carolina Supreme Court addressed

the prerequisites for a valid constitutional waiver. They held that for "a waiver to be valid under the due process clause, it must be an intentional relinquishment of a known right or privilege. Further, the record must clearly establish the waiver." 295 S.E.2d at 265. In other words, a waiver is knowing if "at the time it was signed the [fugitive] had a general knowledge and understanding of what was involved in the waiver." Pierson v. Grant, 527 F.2d 161 (8th Cir., 1975). See, also, Beecher v. State, 256 So.2d 154 (1971) (the court held the fugitive was cognizant of what he was doing); U.S. Ex. Rel. Mayberry v. Yeager, 321 F.Supp. 199 (1971) (the fugitive expressly and knowingly waived extradition).

Second, you asked whether an accused fugitive who has signed a waiver of extradition can later revoke that waiver. In Brady, the United States Supreme Court held "a defendant is not entitled to withdraw his [guilty] plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the state's case for the likely penalties attached to the alternative courses of action." 397 U.S. at 757. Furthermore, a proper plea cannot be withdrawn because the law upon which it was based later becomes suspect. Brady clarifies that once a defendant knowingly and intelligently waives his constitutional rights, he cannot be heard to complain thereafter. Additionally, numerous cases addressing extradition waivers have impliedly held that a waiver cannot be revoked. See, State v. Maglio, 459 A.2d 1209 (N.J. Supra. L. 1983) (citing numerous cases upholding advance waivers of extradition); 35 C.J.S., Extradition, §10(a), n. 74 (1960); Beecher, supra,; Pierson, supra. Therefore, once a defendant knowingly and intelligently waives extradition, he cannot thereafter revoke that waiver.

Third, you asked whether a fugitive is entitled to bond after executing a valid waiver of extradition. "A person held in custody in interstate extradition proceedings is not entitled to be admitted to bail, in the absence of statutory or constitutional provisions authorizing bail in such circumstances. Nor is the power to grant bail inherent in the courts." 31 Am.Jur.2d, Extradition, §26. Section 17-9-10 of the South Carolina Code Ann., (1976), provides that an accused fugitive may be released on bail "as in cases of similar character of offenses against the laws of this state." However, once the accused is adjudged a fugitive and arrested on a rendition warrant, the general rule is that bail shall not be granted. 35 C.J.S., Extradition, §19 (1960). Our state addressed that issue in Ex Parte Massee, 95 S.C. 315, 79 S.E. 97 (1913). In Massee, the court held

> The general rule in habeas corpus proceedings is well established, that pending a final hearing the judge or court may admit to bail [citation omitted]. But extradition laws are enacted on the presumption that the state making the demand will accord to the fugitive his right to bail and all other legal rights, and, when it is remembered that the power of the court to judge under habeas corpus is necessarily limited to the inquiry, whether the conditions of the federal laws have been met, it seems obvious that bail should not be allowed pending the hearing, unless some departure from the federal law has been made to appear. (Emphasis added).

As explained above, when an accused fugitive waives extradition, he concedes that his extradition is proper. Therefore, since the fugitive concedes his extradition is proper, under federal law, bail should not be granted.

Sincerely,

Ralph K. Anderson, III

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