

1981 WL 158095 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 24, 1981

***1 Re: Waiver of Extradition: State of Florida v. Archie B. Gray aka Archie B. Gray, Jr.**

Lieutenant William C. Butler
Extradition Officer
Greenville Sheriff's Department
4 McGee Street
Greenville SC 29601

Dear Lt. Butler:

You have inquired as to whether a waiver of extradition as a condition precedent of probation constitutes a valid waiver under the law of extradition. Your inquiry relates to the above-referenced individual who is wanted by the State of Florida for violation of his probation. Mr. Gray apparently signed a probation agreement which contained a waiver of extradition as a condition of his being placed on probationary status.

Although our Supreme Court has not considered the question of whether such a waiver of extradition is valid, there is substantial authority for the proposition that a waiver of extradition as a condition of parole or probation is generally considered to be valid. [White v. Hall](#), 291 A.2d 694, 15 Md.App. 446 (1972); *Ex Parte Casements*, 49 A.2d 437, 24 N.J. Misc. 345 (1946); *State ex rel. Morris v. Tahash*, 115 N.W.2d 676, 262 Minn. 562 (1962); *Wright v. Page*, 414 P.2d 570 (Oka. 1966); *Hunt v. Hand*, 186 Ka. 670, 352 P.2d 1 (1960); *Ex parte Williams*, 472 S.W.2d 779 (Tx. Crim. Ap. 1971); *Pierson v. Grant*, 527 F.2d 161 (8th Cir. 1975); *Forester v. Calif. Adult Authy.*, 510 F.2d 58 (8th Cir. 1975); *Ex Parte Johnson*, Tx. Cr. App. 610 S.W.2d 757 (1981); *Schwartz v. Woodahl*, 157 Mont. 479, 487 P.2d 300 (1971); *State ex rel. Swyston v. Hedman*, 288 Minn. 530, 179 N.W.2d 282 (1970); *Madden v. Simmons*, 92 So.2d 922 (Ala. App. 1957); *Pierce v. Smith*, 31 Wash. 2d 52, 195 P.2d 112 (1948), *cert. denied*, 335 U.S. 834.

The cases cited generally conclude that the requirement that one agree to waive extradition as a condition precedent of parole or probation does not render the waiver involuntary absent a specific showing as to how the condition was coercive in a particular case. See, [Pierson v. Grant](#), 527 F.2d at 164. On the question of whether such a waiver was knowingly made, the Court in *Pierson* noted that it is sufficient if the person knew generally that he could require the State to undergo formal procedures to effect his return and that there exists no requirement that the accused be specifically advised of the procedures.

It occurs to me that, prior to the return of a person who has signed such an agreement, you should establish the following:

- (1) That the accused actually signed such an agreement;
- (2) That he generally understood the terms of the agreement;
- (3) That there existed no specific, articulable coercion which made the accused sign the waiver; and
- (4) That the accused, after having read or been advised of the contents of the agreement, signed the agreement as part of the agreement of parole or probation.

The above findings should be reduced to writing and filed for any future inquiry.

*2 It is my opinion that a waiver of extradition as a condition of parole or probation is valid so long as the foregoing conditions are met. In that event, the accused may be returned to the requesting state without going through formal extradition proceedings.

I hope the foregoing answers your question. If you have any further question about this matter, please feel free to contact me.

Kind regards.

Very truly yours,

William K. Moore
Assistant Attorney General

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