ALAN WILSON
ATTORNEY GENERAL

July 27, 2020

Judge Terri Murray
Senior Ministerial Recorder
100 South Main Street
Greer, SC 29650

Dear Judge Murray:

We received your request seeking an opinion on whether it is proper to issue a fugitive justice warrant pursuant to Section 17-9-10 on the basis of a bench warrant issued in a foreign state because the defendant failed to appear for a criminal proceeding, or on the basis of a probation violation asserted by a foreign state. This opinion sets out our Office's understanding of your question and our response.

Issue (as quoted from your letter):

> We have always held the belief . . .. that we cannot issue a fugitive warrant if the charge from out of state is a failure to appear or comply (bench warrant) or if the charge is for violation of probation, regardless of what the underlying charges are.
>
> [S.C. Code Ann. § 17-9-10 (2014)] says that a warrant may be issued for "any offense by which the law of the state in which the offense was committed is punishable either capitally or by imprisonment for one year or upwards in any state prison." Since a bench warrant is an order from a court to take an individual into custody and to bring the individual before the court to answer for another charge there would be no punitive sentence for the actual FTA or FTC. Likewise, there is no criminal sentence for the actual violation of probation, although the individual may be given a jail sentence for the underlying or original charges.
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> . . .
>
> This has become a topic of consternation amongst the officers with our police department and with our judges, especially when the underlying charge may be a violent or heinous crime.

Law/Analysis:

Your letter references S.C. Code Ann. § 17-9-10 (2014), which sets out the criteria for a fugitive warrant. That Code section reads in full:

> Any officer in the State authorized by law to issue warrants for the arrest of any person charged with crime shall, on satisfactory information laid before him under the oath of any credible person that any fugitive in the State has committed, out of the State and within any other state, any offense which by the law of the state in which the offense was committed is punishable either capitally or by imprisonment for one year or upwards in any state prison, issue a warrant for such fugitive and commit him to any jail within the State for the space of twenty days, unless sooner demanded by the public authorities of the state wherein the offense may have been committed, agreeable to the act of Congress in that case made and provided. If no demand be made within such time the fugitive shall be liberated, unless sufficient cause be shown to the contrary. Nothing herein contained shall be construed to deprive any person so arrested of the right to release on bail as in cases of similar character of offenses against the laws of this State.

Id. More simply put, "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." *Op. S.C. Att'y Gen.*, 1990 WL 482400 (January 22, 1990).

> [T]he right of the executive authority of one State to demand of the executive authority of another State the return of a fugitive from its justice is controlled not by the laws of the asylum State, but by Article IV, Section 2, Clause 2 of the Federal Constitution . . . [Section 17-9-10] cannot, and does not purport to, abridge that right; it deals only with the issuance of a fugitive warrant, and arrest and detention thereunder, prior to action by the demanding State pursuant to Federal law.

Bolton v. Timmerman, 233 S.C. 429, 432-33, 105 S.E.2d 518, 519-20 (1958) (citing *State of South Carolina v. Bailey*, 289 U.S. 412, 53 S.Ct. 667, 77 L.Ed. 1292 (1933)); *see also* 18 U.S.C. § 3182 (Federal statute governing fugitive extradition between states).

For the purposes of this question, we understand that you are asking about a situation where a fugitive warrant is sought and the judge is presented with a bench warrant issued in a foreign state because the defendant failed to appear for a proceeding on underlying criminal charges. The bench warrant may result in incarceration but does not carry a criminal penalty in

itself. This should not be confused with the criminal offense of Failure to Appear set out in S.C. Code Ann. § 17-15-90 (2014).

As you note in your letter, the bench warrant is not in itself "punishable . . . by imprisonment for one year or upwards" in the state where they originated. *Cf.* S.C. Code Ann. § 17-9-10 (2014). Your concern is that this situation may not satisfy the requirement of Section 17-9-10. *See id.*

We believe a court would resolve this situation by examining the details of the underlying criminal charge that gave rise to the bench warrant. That underlying charge is the criminal offense that the state requesting extradition ultimately seeks to prosecute. South Carolina law requires that a judge issuing a fugitive warrant must have "satisfactory information laid before him." *Id.* In the scenario you describe, the bench warrant could provide such information. We believe that underlying charge is the one that must be "punishable . . . by imprisonment for one year or upwards" in the foreign state. S.C. Code Ann. § 17-9-10 (2014). If that condition is met, we believe an appellate court would affirm that a fugitive warrant is proper.

This reasoning also applies to a situation where an individual is on probation in a foreign state, that person violates their probation and flees from that state to South Carolina, and the foreign state seeks their return for the probation violation. The 1938 case of *Reed v. Colpoys* addressed the propriety of extradition for a violation of a form of supervised release. There the Federal D.C. Circuit Court of Appeals held:

> It is settled law that one is a fugitive from justice within the purview of the Constitutional provision who, having been charged with crime in the demanding State, leaves that State for any purpose whatsoever. The law is also settled that a paroled prisoner who has, in violation of parole, left the State in which he was convicted of crime is, within the Constitutional provision in question, a person charged with crime in the State where he was convicted and one who has fled from the justice of that State, so that he is subject to extradition.

Reed v. Colpoys, 99 F.2d 396, 397 (D.C. Cir. 1938).

While it appears that this Office has never answered this question directly, our prior opinions do provide some guidance. One prior opinion concluded that a Georgia probation violator arrested in South Carolina on a fugitive warrant was eligible for bail under our fugitive warrant statute, then codified as Section 17-201 of the 1962 Code. *Op. S.C. Att'y Gen.*, 1968 WL 12299 (May 27, 1968). Another more recent opinion of this Office contemplates that other states

will arrest South Carolina probation violators on fugitive warrants when found within their states. *Op. S.C. Att'y Gen.*, 1989 WL 508576 (August 17, 1989).

Just as with a bench warrant, we believe a court would resolve this situation by examining the details of the underlying criminal charge that gave rise to the bench warrant. Evidence of a probation violation from a foreign state may be "satisfactory information" that a person is a fugitive from a foreign state for an offense that is "punishable . . . by imprisonment for one year or upwards" in the foreign state. S.C. Code Ann. § 17-9-10 (2014). If that condition is met, we believe an appellate court would affirm that a fugitive warrant is proper.

We refine this conclusion about a fleeing offender with one caveat that is specific to transferred offenders. A foreign state may place an offender on a form of supervised release, such as probation or parole. The offender then comes to South Carolina and transfers that supervision to our State pursuant to the Interstate Compact for Adult Offender Supervision, or "ICAOS." *See* S.C. Code Ann. §§ 24-21-1100 *et seq.* Thereafter, the foreign state seeks the return of that offender on the basis of a violation of their supervised release. In that specific scenario, it appears that the appropriate procedure generally would be specified by the Interstate Commission pursuant to the ICAOS. *See* S.C. Code Ann. § 24-21-1105(4) (2007).

South Carolina has adopted the ICAOS and codified it at S.C. Code Ann. §§ 24-21-1100 *et seq.* One stated purpose of the ICAOS is "to provide a means of returning offenders to the originating jurisdictions when necessary." S.C. Code Ann. § 24-21-1105(4) (2007). The ICAOS as adopted in South Carolina also supersedes any state law to the contrary. S.C. Code Ann. § 24-21-1220(A)(2) (2007).

In 2008 our Office issued a lengthy opinion, *Op. S.C. Att'y Gen.*, 2008 WL 317746 (January 24, 2008), which addressed several questions about the ICAOS. A copy of this opinion has been included with this one for your convenient review. That opinion specifically considered whether a transferred offender could be arrested in South Carolina merely under the authority of the foreign state's warrant for a probation violation. *Id.* The requestor stated that "[i]n most instances, the use of fugitive warrants has been successful in facilitating the arrest and detention of out-of-state offenders being returned to the sending state under the Compact; however, the terms of the fugitive warrant statute itself have periodically caused difficulties with carrying out the purpose of the Compact." *Id.* (emphasis added).

Our 2008 opinion concluded that in the specific context of the ICAOS, a foreign state warrant for a probation violation is sufficient: "a South Carolina law enforcement officer with powers of arrest would be authorized to arrest an out-of-state offender, probationer or parolee, being supervised in South Carolina based solely on an out-of-state arrest warrant charging a

violation of the conditions of the offender's supervision." *Id.* In the context of the question considered there, the unstated corollary was that a South Carolina fugitive warrant was not required to arrest a supervised offender when the foreign state issued an arrest warrant. *See id.*

This opinion should not be construed such that a fugitive justice warrant is prohibited in all cases involving a transferred offender. Indeed, our 2008 opinion referenced the successful use of fugitive warrants in certain cases. We simply urge your court to refer to the specific provisions set out by the Commission to ensure that any proceedings with respect to a transferred offender are consistent with them. *See id.* ("[T]he out-of-state offender may not be admitted to bail in such circumstances."); *see also State ex rel. Ohio Adult Parole Authority v. Coniglio*, 82 Ohio App.3d 52, 610 N.E.2d 1196 (1993) ("Under the interstate compact . . . the [receiving] Ohio authorities are bound by the decision of [sending state] Pennsylvania with respect to whether the apprehended probationer should be considered for release on bond . . . .").

Conclusion:

In conclusion, the question of whether a particular fugitive justice warrant is proper is a fact-specific question that we cannot answer definitively in a general opinion of this Office. Furthermore, our Office's longstanding policy is to defer to courts in their determinations of such matters.

As a general matter, however, we believe that when a fugitive warrant is sought based on a bench warrant issued in a foreign state because the defendant failed to appear for a criminal proceeding, an appellate court would examine the underlying criminal charge. Even though the bench warrant itself does not carry a criminal penalty, it may present "satisfactory information" that a person is wanted for a crime "punishable . . . by imprisonment for one year or upwards" in the foreign state. *See* S.C. Code Ann. § 17-9-10 (2014). If the underlying charge meets the requirement of Section 17-9-10, we believe an appellate court generally would affirm that a fugitive warrant is proper. *See id.*

Similarly, evidence of a probation violation from a foreign state may also be "satisfactory information" that a person is a fugitive from a foreign state. *See id.* Where an offender is on probation in a foreign state, and that person violates their probation and flees from that state to South Carolina, the foreign state has the power to seek their return. *See Reed v. Colpoys*, 99 F.2d 396, 397 (1938). If the judge is satisfied that the underlying offense was a crime "punishable . . . by imprisonment for one year or upwards" in the foreign state, we believe an appellate court generally would affirm that a fugitive warrant is proper. *See Op. S.C. Att'y Gen.*, 1968 WL 12299 (May 27, 1968).

We refine this conclusion about a fleeing offender with one caveat that is specific to transferred offenders. A foreign state may place an offender on a form of supervised release, such as probation or parole. The offender then comes to South Carolina and transfers that supervision to our State pursuant to the Interstate Compact for Adult Offender Supervision, or "ICAOS." *See* S.C. Code Ann. §§ 24-21-1100 *et seq*. Thereafter, the foreign state seeks the return of that offender on the basis of a violation of their supervised release. In that specific scenario, it appears that the appropriate procedure generally would be specified by the Interstate Commission pursuant to the ICAOS. *See* S.C. Code Ann. § 24-21-1105(4) (2007). In particular, our Office has previously opined in 2008 that such a transferred offender could be arrested in South Carolina pursuant to an out-of-state arrest warrant only, without also requiring a fugitive warrant. *Op. S.C. Att'y Gen.*, 2008 WL 317746 (January 24, 2008).

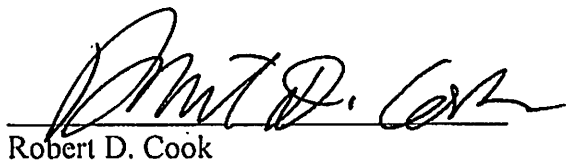
This opinion should not be construed such that a fugitive justice warrant is prohibited in all cases involving a transferred offender. Indeed, our 2008 opinion referenced the successful use of fugitive warrants in certain cases. We simply urge your court to refer to the specific provisions set out by the Commission to ensure that any proceedings with respect to a transferred offender are consistent with them. *See id.* ("[T]he out-of-state offender may not be admitted to bail in such circumstances."); *see also State ex rel. Ohio Adult Parole Authority v. Coniglio*, 82 Ohio App.3d 52, 610 N.E.2d 1196 (1993)).

A copy of our 2008 opinion, *Op. S.C. Att'y Gen.*, 2008 WL 317746 (January 24, 2008), has been included with this one for your convenient review. Furthermore, we encourage any judge who encounters a case involving the ICAOS to contact the South Carolina Probation, Parole, and Pardon Board for more information about current ICAOS protocols.

Sincerely,

David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General