

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-543

JANUARY TERM, 2005

In re Appeal of Bruce Wilcox
a/k/a Bruce Puchel

}	APPEALED FROM:
}	
}	Franklin Superior Court
}	
}	DOCKET NO. S379-04 Fc
}	
}	Trial Judge: Ben W. Joseph
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}	
}	

In the above-entitled cause, the Clerk will enter:

Petitioner Bruce Wilcox appeals from the trial court's order denying his petition for a writ of habeas corpus to prevent his extradition to Connecticut. He argues that the court erred because his identity was not established, and an affidavit supporting the extradition request was not made before a magistrate. We affirm.

Petitioner was served with a Governor's warrant on September 1, 2004. He filed a habeas petition on September 14, 2004, asserting that the warrant was deficient because the papers referred to "Bruce Pucel" rather than "Bruce Wilcox," the information did not charge Bruce Wilcox, and the affidavit was not made before a magistrate. After a hearing, the court issued an entry order denying the habeas petition. The court found that petitioner had been adequately identified by the state requesting his extradition. It explained that the New Haven, Connecticut State's Attorney had identified petitioner as "Bruce Puchel aka Bruce Wilcox" in his application for requisition. He had also included fingerprint records, as well as a large photograph that "clearly" depicted petitioner. The court also found that the documents submitted by the State of Connecticut along with its extradition request showed that petitioner had been charged with assault on the basis of an affidavit submitted to a magistrate. As the court explained, in June 2003, the magistrate had found probable cause that a crime had been committed, and probable cause for the issuance of an arrest warrant for petitioner. The court thus denied petitioner's habeas petition. This appeal followed.

Petitioner first argues that the trial court erred in finding that his identity has been established by the requesting state because the information and affidavit refer to "Bruce Pucel" rather than Bruce Wilcox. According to petitioner, because he was not identified by name, there must be affirmative facts to connect him with the individual demanded by the extradition request. He argues that the document that refers to "Bruce Pucel aka Bruce Wilcox" does not provide any information "as to why this is." He asserts, without offering any legal support for his assertion, that the photograph provided by the State of Connecticut cannot suffice to establish his identity.

We reject these arguments. To support a warrant of extradition, the documents presented by the executive authority making the demand must show that: (1) the accused was present in the demanding state at the time of the commission of the alleged crime, and thereafter fled from that state; (2) the accused is now in Vermont; and (3) he is lawfully charged by indictment found or by information filed by a prosecuting officer and supported by affidavit to the facts, or by affidavit made before a magistrate in that state, with having committed a crime under the laws of that state. 13 V.S.A. § 4943(b). Our review of the legality of a sister state's extradition request is limited. *In re Ladd*, 157 Vt. 270, 272 (1991). "Our sole task is to ensure the validity of the requisition warrant and procedural compliance with our extradition statute, and we will not look behind these documents or examine the merits of the charges against petitioner." *Id.* (citations omitted). A Governor's warrant is prima facie evidence that the constitutional and statutory requirements for extradition have been met. *Id.* at 274.

Petitioner was sufficiently identified here. There is no statutory requirement that a demanding state's rendition request include proof of identity. In re Haynes, 155 Vt. 256, 258 (1990). We have held that the identity of name is sufficient to meet all statutory requirements, unless the accused rebuts the presumption created by that identity by offering evidence that he is not the same person named in the indictment. In re Jones, 164 Vt. 619, 620 (1995) (mem.) (citing Haynes, 155 Vt. at 259). In this case, as the trial court found, the requesting state named the fugitive sought as " Bruce Puchel aka Bruce Wilcox" in its application for requisition. The requesting state also provided fingerprints and a large photograph that the trial court found "clearly" depicted petitioner. Petitioner did not present any evidence to rebut the State's prima facie case, and the trial court did not err in finding that petitioner's identity had been sufficiently established.

Petitioner next argues that the trial court erred in finding that the affidavit had been made before a magistrate. He asserts that the trial court failed to address his argument that the information was invalid because it was not supported by an affidavit based on firsthand information establishing probable cause, and it did not establish his identity. Petitioner maintains that there is no indication that the signature at the bottom of the affidavit provided by the requesting state is that of a judge, and he asserts that the affidavit was not made before a magistrate as the dates differ. He argues that, although there were documents attesting that Peter Emmett Wiese was a judge of the Superior Court of Connecticut, the signature is markedly different from that found on the bottom of the affidavit.

These arguments are without merit. As the trial court found, the requesting state provided a copy of an application for an arrest warrant, setting out the alleged facts supporting the charges against petitioner, that was signed by a judge. The judge found probable cause to believe that an offense had been committed and that the accused had committed it, and therefore, that probable cause existed for the issuance of an arrest warrant. The judge also signed the arrest warrant. The requesting state provided a sworn and notarized statement that it had provided a true copy of the arrest warrant in this case, and it certified that Peter Wiese was a judge at the time of signing the arrest warrant documents. The legibility of the signature, and its consistency between various documents, is immaterial in light of this evidence. The statutory requirements were met here, and the trial court did not err in denying the petition for writ of habeas corpus.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned