

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-356

MAY TERM, 2007

Michael Mayotte	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Superior Court
	}	
Robert Hofmann	}	DOCKET NO. 37-1-06 Wrcv
	}	

Trial Judge: William D. Cohen

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

Petitioner appeals the superior court’s denial of his habeas corpus petition. Petitioner argues that he is entitled to release because he was incarcerated for more than ninety days without a valid governor’s warrant. We affirm.

Petitioner was arrested on November 14, 2005 on a fugitive warrant from the State of Maryland. On November 16, 2005, the district court ordered petitioner to be held on \$100,000 bail and set a hearing to allow Maryland thirty days to obtain a governor’s warrant for petitioner’s extradition. The State requested an additional sixty days to complete the paperwork for a governor’s warrant on December 13, 2005. On January 5, 2006, petitioner was served with a governor’s warrant dated December 30, 2005. On January 20, 2006, petitioner filed a petition for habeas corpus, alleging that this first warrant was defective.* Before the court heard his petition, petitioner was served with a second governor’s warrant on February 24, 2006, dated February 18, 2006.

Following a hearing, the superior court denied petitioner’s request for release. The court held that even if petitioner was held over ninety days on an invalid warrant, the second warrant provided a valid basis to continue petitioner’s detention. The pertinent facts are undisputed, thus, the question is whether the trial court’s legal conclusions are supported by the facts. We review this question do novo. Charbonneau v. Gorczyk, 2003 VT 105, ¶ 2, 176 Vt. 140.

Extradition is governed foremost by the Constitution, which states that persons charged with a felony in one state and found in another state “shall on Demand of the executive Authority of the

* The State of Maryland entered a *nolle prosequi* because petitioner’s date of birth was listed incorrectly on the arrest warrant.

State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.” U.S. Const. art. IV, § 2, cl. 2. Statutory extradition procedures allow an accused to be held for thirty days while a governor’s warrant is obtained. 13 V.S.A. § 4955. Upon request, this time may be extended by an additional sixty days. 13 V.S.A. § 4957. Thus, the statute foresees that the warrant will issue within ninety days. In this case, both parties agree that petitioner was held beyond ninety days before the second warrant was issued.

On appeal, petitioner argues that the second warrant was invalid because he was detained for more than ninety days before it was served on him. Even accepting that petitioner was held beyond ninety days on an invalid warrant, we conclude that there is no basis to release him, given that a proper Governor’s warrant has been issued. As we have emphasized in the past, the Constitution “requires us to honor the Governor’s warrant.” In re Lovejoy, 150 Vt. 588, 589 (1988). Thus, a previous invalid arrest does not vitiate the validity of a subsequent governor’s warrant. In re Saunders, 138 Vt. 259, 263 (1980). The February warrant provides a valid basis for petitioner’s detention and petitioner’s attempt to challenge his earlier detention under the first warrant is a moot issue. Id. at 264. “Even if there [were] irregularities in petitioner’s prerequisite detention, these irregularities are no bar to extradition once a rendition warrant is issued and received.” In re Hval, 149 Vt. 58, 61 (1987).

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice