

11-25-2015

## Windsor v. State Respondent's Brief Dckt. 43009

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

WILLIAM M. WINDSOR,	)	
	)	No. 43009
Petitioner-Appellant,	)	
	)	Ada Co. Case No.
v.	)	CV-HC-2015-3902
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	

**BRIEF OF RESPONDENT**

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE DANIEL L. STECKEL  
Magistrate Judge

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PETITIONER-APPELLANT

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NOV 25 2015

Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_  
Entered on ATS by \_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

William M. Windsor appeals from the denial of his petition for writ of habeas corpus, brought to challenge extradition proceedings in Idaho.

### Statement Of The Facts And Course Of The Proceedings

Windsor filed a petition for writ of habeas corpus. (R., pp. 3-69.) His petition alleged he was arrested in Meridian. (R., pp. 20-21.) He alleged that officers told him he was wanted in Texas and Montana. (R., p. 22.) His cause of action was apparently that “things that a judge is supposed to do in extradition were not done.” (R., pp. 24, 34-56; see also pp. 93-96.) He requested relief of being released and not again arrested on the out-of-state charges. (R., p. 64.) The magistrate denied the petition. (R., pp. 85, 99.) Windsor filed a notice of appeal. (R., pp. 97, 101.)

## ISSUE

Windsor states that there are 32 issues on appeal. (Appellant's brief, pp. 7-9.) Because of their length they are not reproduced here. The state rephrases the issue as:

Has Windsor failed to show error in the dismissal of his habeas corpus petition challenging his extradition hold?

## ARGUMENT

### Windsor Has Not Shown Error In The Dismissal Of His Habeas Corpus Petition Challenging His Extradition Hold

#### A. Introduction

Windsor asserts that the magistrate judge<sup>1</sup> erred by denying his petition for writ of habeas corpus, alleging a multitude of errors and violations of his rights. (Appellant's brief.) He has failed to show any grounds for reversing the magistrate in the record. First, because he is no longer in custody in Idaho, his argument is moot. Second, he has failed to provide an adequate record to show the factual underpinnings of his claims. Finally, he has failed to show a legal basis for his challenges to his extradition hold.

#### B. Standard Of Review

Denial of a writ of habeas corpus is reviewed for an abuse of discretion. Quinlan v. Idaho Com'n for Pardons and Parole, 138 Idaho 726, 729, 69 P.3d 146, 149 (2003). "When appealing from the denial of a writ of habeas corpus, the petitioner has the burden of establishing error." Id.

#### C. Windsor's Claim Is Moot

"An issue becomes moot if it does not present a real and substantial controversy that is capable of being concluded by judicial relief." State v.

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<sup>1</sup> The record is unclear whether the petition was filed in the district court or the magistrate division. If the habeas corpus petition was heard in the magistrate division, this Court lacks jurisdiction because no intermediate appeal to the district court was taken. Olson v. Montoya, 147 Idaho 833, 839, 215 P.3d 553, 559 (Ct. App. 2009); I.A.R. 11(a) (final orders of the *district court* are appealable to the supreme court).

Barclay, 149 Idaho 6, 8, 232 P.3d 327, 329 (2010) (citations omitted). “The essence of habeas corpus is an attack upon the legality of a person’s detention for the purpose of securing release where custody is illegal.” Application of Robison, 107 Idaho 1055, 1057-58, 695 P.2d 440, 442-43 (Ct. App. 1985). An inmate’s release from custody therefore generally renders issues raised in habeas corpus proceedings moot. Freeman v. Idaho Dept. of Correction, 138 Idaho 872, 875, 71 P.3d 471, 474 (2003). Windsor acknowledges that he was delivered to Montana. (Appellant’s brief, pp. 6, 18.) Because Windsor is no longer in the custody of the State of Idaho, his claims in habeas corpus are moot.

D. The Record Does Not Show Any Abuse Of Discretion

Even if not moot, Windsor’s claims do not merit relief. Under section six of the Uniform Criminal Extradition Act, as adopted in Idaho, Idaho’s governor may “surrender on demand of the executive authority of any other state” a person charged with a crime in the demanding state, where the person committed an “act in this state, or in a third state, intentionally resulting in a crime” in the demanding state. I.C. § 19-4506. Idaho law is “plain that error must be shown on the record and that the appellant has the burden of providing a sufficient record on appeal.” Garcia v. Pinkham, 144 Idaho 898, 900, 174 P.3d 868, 870 (2007). Moreover, the appellant has the burden of supporting his claims of error with citation to relevant legal authority. State v. Creech, 132 Idaho 1, 20, 966 P.2d 1, 20 (1997).

The record shows that Windsor was charged for acts, “committed outside the state which resulted in the commission of crimes in the State of Montana.”

(R., p. 93.) This made Windsor extraditable at the discretion of the governor. I.C. § 19-4506. There is nothing in the record or the relevant law showing that Windsor was improperly held pending his extradition under I.C. § 19-4506.

Windsor argues that there were multiple procedural and constitutional defects in the extradition proceedings. (Appellant's brief, pp. 18-47.) He has, however, failed to present any record substantiating his factual allegations. In addition, he has not presented relevant legal authority showing that, even if proved, his allegations would be a basis for habeas corpus relief.

For example, Windsor claims a multitude of defects in the extradition proceedings he ultimately challenges, but there is nothing in the record indicating he ever submitted the record of those proceedings to the magistrate, and those records are, in turn, not before this Court. Neither the magistrate nor this Court was required to merely accept Windsor's synopsis of those proceedings in the absence of the actual records thereof. The extradition proceedings are entitled to a presumption of regularity. State v. Wolfe, 158 Idaho 55, \_\_\_, 343 P.3d 497, 503 (2015). Windsor has failed to meaningfully rebut that presumption.

Moreover, few of his claims are supported with actual legal authority indicating that, even if his factual claims were true, such would entitle him to habeas corpus relief. For example, he claims repeatedly that he is not a fugitive because he was not in Montana when the crimes there were committed. (Appellant's brief, pp. 19, 22, 26, 42.) Such would be relevant if the extradition were being pursued according to the Extradition Clause of the Constitution of the United States of America, which applies to fugitives. E.g. New Mexico ex rel.

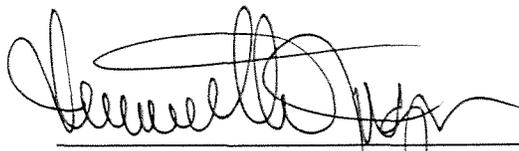
Ortiz v. Reed, 524 U.S. 151, 152 (1998). It is irrelevant, however, in non-fugitive proceedings controlled by statute. E.g., I.C. § 19-4506; Jenkins v. Garrison, 453 S.W.2d 698, 701 (Ga. 1995) (explaining that section six of the Uniform Criminal Extradition Act does not depend on the extradition clause of the federal constitution, but instead on “comity between the states” and therefore applies where the accused was not present in the requesting state). Because Windsor’s extradition was a non-fugitive extradition (see R., p. 93), whether Windsor was in fact a fugitive is irrelevant.

Because Windsor is no longer in the custody of the State of Idaho, his claims are moot. Even if not moot, they are unsupported by a sufficient factual record and are not supported by relevant law. Therefore Windsor has failed to carry his burden of showing error.

#### CONCLUSION

The state respectfully requests this Court to dismiss the appeal as moot or affirm the holding of the court below.

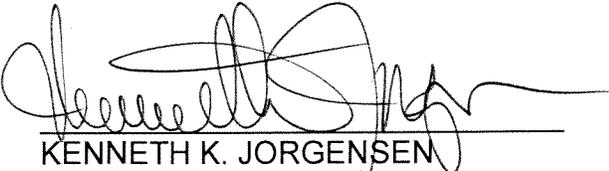
DATED this 25th day of November, 2015.

  
\_\_\_\_\_  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of November, 2015, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

WILLIAM M. WINDSOR  
110 E. CENTER ST., #1213  
MADISON, SD 57042



KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd