

Affirmed and Opinion filed October 12, 2000.



In The

## **Fourteenth Court of Appeals**

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NO. 14-00-01003-CR  
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**EX PARTE THOMAS GERALD BOBO, Appellant**

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**On Appeal from the 278<sup>th</sup> District Court  
Walker County, Texas  
Trial Court Cause No. 20,873-C**

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### **O P I N I O N**

Appellant, Thomas Gerald Bobo, appeals from the denial of habeas corpus relief from a governor's warrant of extradition. We affirm.

### **BACKGROUND**

In July of 1999, Bobo was convicted in the 278<sup>th</sup> Judicial District Court of Walker County, Texas, of the felony offense of possession of a controlled substance, namely, heroin. Subsequently, the Governor of the State of Texas issued a warrant to extradite Bobo to Louisiana so that he could face charges related to heroin distribution there. The "Bill of Indictment" attached to the warrant shows that Bobo has been charged in Louisiana with four counts of heroin distribution, one count of attempt to distribute heroin, and

another count of conspiracy to distribute heroin. In response to the extradition warrant, Bobo filed an application for a writ of habeas corpus, arguing that extradition to Louisiana would be “unlawful” because “the pending charge there is for alleged actions and facts for which [he] has already been charged with, and convicted of, in the State of Texas.” Bobo maintained therefore that Louisiana is “collaterally estopped” from convicting him and, thus, cannot obtain his extradition.

In considering Bobo’s habeas corpus application, the trial court found that Bobo “is the person sought by the State of Louisiana, that the criminal charges for which the extradition is sought are now pending in that state, and that the papers filed in connection with the demanded extradition are in order.” The trial court noted further that Bobo’s contention regarding the defense of collateral estoppel bears on Bobo’s “possible guilt under the law of Louisiana, and such questions are outside this court’s jurisdiction.” Accordingly, the trial court denied Bobo’s request for habeas corpus relief. This appeal followed.

## DISCUSSION

Extradition proceedings arise when one state makes a demand upon another for the return of a fugitive from justice. If the governor of the asylum state grants extradition, then an accused’s sole avenue for relief from extradition is through a writ of habeas corpus. *See Ex parte Lebron*, 937 S.W.2d 590, 593 (Tex. App.—San Antonio 1996, pet. ref’d untimely filed); *Lott v. State*, 864 S.W.2d 152, 153 (Tex. App.—Houston [14th Dist.] 1993, pet. ref’d untimely filed). In that context, the purpose of habeas corpus review is not to inquire into the viability of the prosecution or confinement in the demanding state, but, rather, is solely to test the legality of the extradition proceedings. *See Lott*, 864 S.W.2d at 153 (citing *Rentz v. State*, 833 S.W.2d 278, 279 (Tex. App.—Houston [14th Dist.] 1992, no pet.)).

Here, the record contains a governor’s extradition warrant signed by George W. Bush, as Governor of the State of Texas. The warrant declares that Bobo stands charged by the State of Louisiana with distribution of heroin, attempted distribution of heroin, and conspiracy to distribute heroin. As noted above, a Bill of Indictment is attached to the warrant, demonstrating that Bobo has been charged with four counts of heroin distribution, one count of attempted heroin distribution, and another count of conspiracy to distribute heroin, in violation of Louisiana law. The warrant is accompanied by a sworn affidavit from

Sargeant James Purvis of the Metro Narcotics Unit in Louisiana, describing Bobo's involvement in the sale of heroin within that state. There is also a sworn affidavit from George D. Ross, an Assistant District Attorney for Ouachita Parish, Louisiana, detailing the nature and validity of the charges against Bobo and testifying to his status as a "fugitive from justice." In addition, there is a determination from the Honorable John Larry Lolley, Judge of the Fourth Judicial District for Ouachita Parish, Louisiana, that probable cause exists to believe that Bobo committed the crimes for which he is charged. Bobo's fingerprint records are also enclosed, along with additional documentation which authenticates these records.

Once the governor of an asylum state grants extradition, and issues a warrant to that effect, a court considering an application for habeas corpus relief from such an order can only decide the following: (1) whether the extradition documents on their face are in order; (2) whether the petitioner has been charged with a crime in the demanding state; (3) whether the petitioner is the person named in the request for extradition; and (4) whether the petitioner is a fugitive. *See Ibarra v. State*, 961 S.W.2d 415, 416-17 (Tex. App.—Houston [1st Dist.] 1997, no pet.) (citing *Michigan v. Doran*, 439 U.S. 282, 289, 99 S.Ct. 530, 535, 58 L.Ed.2d 521 (1978); *Ex parte Flores*, 548 S.W.2d 31, 32 (Tex. Crim. App.1977); *State v. Taylor*, 838 S.W.2d 895, 897 (Tex. App.—Houston [1st Dist.] 1997, no pet.)); *see also Ex parte Lopez*, 988 S.W.2d 788, 789 (Tex. App.—San Antonio 1999, no pet.). A governor's grant of extradition is *prima facie* proof that constitutional and statutory requirements have been met. *See Ibarra*, 961 S.W.2d at 417 (citing *Doran*, 439 U.S. at 289, 99 S.Ct. at 535; *Taylor*, 838 S.W.2d at 897). If the governor's warrant is regular on its face, then the burden shifts to the accused to show the warrant was (1) not legally issued, (2) not based on proper authority, or (3) contains inaccurate recitals. *See id.* (citing *Ex parte Cain*, 592 S.W.2d 359, 362 (Tex. Crim. App.1980)); *see also Rodriguez*, 943 S.W.2d at 99. We agree with the trial court that the governor's warrant is regular on its face and that the constitutional and statutory requirements for extradition have been met. *See Ibarra*, 961 S.W.2d at 417). Bobo's application for habeas corpus relief fails establish otherwise, and so he has failed to meet his burden to show that extradition is unlawful in this instance.

In his application for habeas corpus relief, Bobo's sole argument against extradition is that Louisiana is "collaterally estopped" from convicting him for conduct that he has already been punished for in Texas.

Significantly, a habeas corpus proceeding in an extradition case is not a trial on the merits but is, instead, a hearing on the governor's warrant. *See Ex parte McClintick*, 945 S.W.2d 188, 191 (Tex. App.—San Antonio 1999, no pet.) (citing *Bentley-Guest v. State*, 837 S.W.2d 413, 415 (Tex. App.—San Antonio 1992, no pet.)). A court sitting in the asylum state may not consider defenses, or the guilt or innocence of the accused, in an extradition proceeding. *See Ibarra*, 961 S.W.2d at 418 (citing *California v. Superior Court*, 482 U.S. 400, 408-09, 107 S.Ct. 2433, 2438-39, 96 L.Ed.2d 332 (1987); *State ex rel. Holmes v. Klevenhagen*, 819 S.W.2d 539, 542 (Tex. Crim. App. 1991)). The asylum state court may not inquire into whether the charging instrument is sufficient so as to withstand a generalized motion to dismiss or common law demurrer. *See id.* (citing *California v. Superior Court*, 482 U.S. at 410); *Henson v. State*, 885 S.W.2d 485, 486 (Tex. App.—El Paso 1994, no pet.)). For purposes of extradition, the inquiry is limited to whether the accused “has been charged with a crime in the demanding state.” *Id.* (citing *Doran*, 439 U.S. at 289). Any due process challenge connected to the extradition “must be presented to the courts of the demanding state.” *McClintick*, 945 S.W.2d at 190 (citing *Ex parte Davis*, 873 S.W.2d 711, 712 (Tex. App.—Fort Worth 1994, no pet.)).

Because Bobo's application does not attack the propriety of the governor's warrant for extradition, but instead invokes a defense to the charges lodged against him, he has not demonstrated that he is entitled to habeas corpus relief in this context. Accordingly, the trial court's decision to deny habeas corpus relief is affirmed.

/s/ Paul C. Murphy  
Chief Justice

Judgment rendered and Opinion filed October 12, 2000.

Panel consists of Chief Justice Murphy and Justices Amidei and Hudson.

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