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Criminal Law—Extradition

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Extradition

In *People* ex rel. *Matochik v. Baker*,[1] the Court of Appeals resolved a conflict existing in the lower courts, by holding that a state can extradite on less exacting terms than those prescribed by the Federal Extradition Statute.[2] The federal statute recites in part that a state *shall* extradite where the executive authority requesting extradition produces a copy of an *indictment*. This is different from the New York statute[3] which provides that the Governor may extradite if the moving papers are "accompanied by a copy of an indictment or by an information supported by affidavit."

In the instant case the Vermont Governor's requisition for extradition included a certified information[4] and five affidavits. The relator, arrested under a warrant of extradition, issued in New York in compliance with Vermont's requisition, attacked the validity of the extradition, by questioning whether a writ of extradition may be granted on an information, when the language of the federal statute calls for an indictment.

The decisions in the Appellate Division have been in conflict. A case prior to the enactment of the present New York statute[5] held that an extraditon proceeding may be based on an information, on the theory that the information is sufficient compliance with the federal statute, where the law of the demanding state authorizes prosecution by that method.[6] However, another department, subsequent to the present statute, held that an information can not support extradition, on the theory that the federal statute was "exclusive and controlling" insofar "as any inconsistency exists" between it and the New York statute.[7]

The Court of Appeals in the instant case predicated its decision on the theory expressed by Judge Halpern in *People* ex rel. *Hollander v. Britt*.[8] The court followed the line of reasoning that

1. 306 N. Y. 32, 114 N. E. 2d 194 (1953).
2. 18 U. S. C. § 3182 (1951).
3. Code Crim. Proc. § 830.
4. Vermont statute prescribes defendant may be prosecuted for crime charged, by an information.
5. See note 3 *supra;* New York adopted the Uniform Criminal Extradition Act in 1936.
6. *People* ex rel. *Mac Sherry v. Enright*, 112 Misc. 568, 184 N. Y. Supp. 248 (Sup. Ct. 1920), *aff'd*, 196 App. Div. 964, 188 N. Y. Supp. 945 (1st Dep't 1921).
7. *People* ex rel *Lipskitz v. Bessenger*, 273 App. Div. 19, 75 N. Y. S. 2d 392 (2nd Dep't 1947).
8. 195 Misc. 722, 92 N. Y. S. 2d 662 (Sup. Ct. 1949), *aff'd*, 276 App. Div. 815, 93 N. Y. S. 2d 704 (4th Dep't 1949).

there is no constitutional prohibition against a state enacting legislation to supplement the federal statute by permitting extradition on less exacting terms. Also, the federal statute prescribes only those terms upon which a state *shall* extradite, but does not prohibit a state from voluntarily providing to extradite under other circumstances less exacting.

The fact that an overwhelming majority of the states have adopted the Uniform Criminal Extradition Act, which allows extradition on an information supported by affidavit, is evidence that it is necessary for the states to supplement the federal statute in order to achieve a more cooperative effort in the prevention of crime and in the enforcement of their respective criminal laws.

Indictment

It has been a long standing practice to include in the indictment, allegations charging defendant as a prior offender and receiving proof thereof at the trial, in order that the judge can impose proper punishment for a multiple offender.[9] This obviously unfair practice will be allowed to continue unless abolished by legislative action. This is stated by the decision in *People v. De Santis*[10] where such prejudicial practice was held not to be reversible error.

From this decision it must also follow that § 1943 of the Penal Law passed in 1926, authorizing the District Attorney to proceed by information *after* the conviction or sentence, to secure heavier punishment, did not abolish the old method, but supplemented it.

In a dissenting opinion Julge Fuld reasoned that such a patently unfair practice was upheld prior to passage of § 1943 of the Penal Law, because it was the only method by which a heavier penalty provided for recidivists could be imposed. The new method is fairer, accomplishes substantially the same purpose, and should be used exclusively.

There was no legal barrier for the court to hurdle in eliminating this prejudicial practice, for no square holding on the intepretation of § 1943 had been previously made, although dictum in one case[11] stated that the "old practice is still permissible although no longer necessary." However, the legislative intent in passing this section would seem to sustain the majority, since the statute

9. *People v. Sickles,* 156 N. Y. 541, 51 N. E. 288 (1898); *Johnson v. People,* 55 N. Y. 512 (1874).
10. 305 N. Y. 44, 110 N. E. 2d 549 (1953), *cert. denied,* 345 U. S. 944 (1953).
11. *People v. Gowasky,* 244 N. Y. 451, 460, 155 N. E. 737, 740 (1927).