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DISTRICT III

June 21, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2014AP2322-CRNM State v. Marvin R. Turner (L. C. No. 2014CF146)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Marvin Turner has filed a no-merit report concluding there is no arguable basis for challenging an order for extradition. Turner was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude no arguable issues of merit appear and we summarily affirm.

On March 7, 2014, the State filed a fugitive complaint against Turner, alleging that when Turner was arrested in Grand Chute, authorities discovered an outstanding warrant for Turner from Tennessee for attempted first-degree murder. At the March 7 initial appearance, Turner

said he contested extradition. The circuit court set bond and set the matter over for twenty days to give the authorities time to procure a governor's warrant. At the continued hearing on March 27, the State informed the court the governor's warrant was not yet ready and asked for an extension.

At the next hearing on May 19, the State informed the circuit court that it had a copy of the governor's warrant from Tennessee, though the Wisconsin governor's warrant had not yet issued. The court addressed statutory timelines, and set the case over again to June 4.

On June 4, the circuit court had the Wisconsin governor's warrant, and Turner's counsel advised the court he was not aware of any basis for filing a petition for writ of habeas corpus challenging the warrant. However, the court allowed counsel to withdraw from his representation of Turner based on Turner's dissatisfaction and set the matter over to June 12 for a final hearing.

On June 10, Turner's new counsel filed a habeas petition, alleging Turner disputed he was the person named in the fugitive complaint because the complaint alleged a birthdate of November 15, 1959, and Turner claimed his birthday was November 19, 1959. On June 12, the State filed an amended fugitive complaint with a corrected birth date and the original Wisconsin governor's warrant. After reviewing the governor's warrant, the circuit court denied Turner's habeas petition and granted the State's request for an order of extradition. The court also addressed Turner's complaint about the length of time he was held and concluded the statutory time limits were not violated.

There is no arguable issue concerning statutory time limitations. Under WIS. STAT. § 976.03(15),¹ there is a thirty-day time limit for holding a person in custody to await the governor's warrant and, upon the expiration of that period, a judge may order a further sixty-day extension. WIS. STAT. § 976.03(17). However, as the circuit court properly observed, Turner was not being held on the extradition charges without a warrant but rather because of the March 4 Wisconsin charges. The authorities were alerted to the Tennessee warrant the next day.

The thirty- and sixty-day time limits under the statute pertain only to those fugitives who are not already in custody pending other charges or serving other sentences. *See State ex rel. Ehlers v. Endicott*, 188 Wis. 2d 57, 66, 523 N.W.2d 189 (Ct. App. 1994). Turner was already in custody for the pending Wisconsin charges. He remained in custody for both the Wisconsin charges and the extradition complaint until May 15, when the pending Wisconsin charges were resolved by plea agreement.² Thus, the thirty-day time limit under WIS. STAT. § 976.03(15) did not begin running until May 15, and the governor's warrant was filed and reviewed by the circuit court within the thirty-day limit.

The record also discloses no basis for challenging the circuit court's denial of Turner's habeas petition. A petition for writ of habeas corpus challenging a governor's warrant can raise only narrow issues: whether the extradition documents were in order; whether there was a criminal charge in Tennessee; whether Turner was the person listed on the warrant; and whether Turner was a fugitive from justice. *See Ehlers*, 188 Wis. 2d at 63.

¹ References to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

The issuance of a governor's warrant raises a presumption that the constitutional and statutory requirements for issuance were met. It is the defendant's burden to overcome that presumption by clear and convincing evidence. *See State ex rel. Clayton v. Wolke*, 69 Wis. 2d 363, 370-71, 230 N.W.2d 869 (1975); *State ex rel. Rodencal v. Fitzgerald*, 164 Wis. 2d 411, 417, 474 N.W.2d 795 (Ct. App. 1991).

There is no arguable issue as to whether the extradition documents were in order, based upon a criminal charge in Tennessee. The Wisconsin governor's warrant demanded Turner be delivered to appointed Tennessee agents based upon authenticated copies of a Tennessee indictment and other documents showing Turner was a fugitive from justice and stood charged with the crime of attempted first-degree murder. The probable cause supporting the indictment stated that Turner stabbed a woman six times in the left side, back, and arms during a domestic incident while intoxicated.³

Turner did not contend that he was not in Tennessee when the alleged first-degree attempted murder occurred, and he acknowledged the Tennessee warrant correctly listed his address. Turner claimed he did not believe he was the "Marvin Turner" that Tennessee was looking for. He offered no evidence in support of this contention, except that the birthdate in the original fugitive complaint was incorrect. However, that error was corrected by the filing of an

² The no-merit report requests we take judicial notice that Turner was sentenced on May 15, 2014. This fact is capable of accurate and ready determination by the judgment of conviction, and Turner does not challenge this fact in any event. *See* WIS. STAT. § 902.01(2)(b).

³ The return of Turner to Tennessee also makes any appeal of the extradition order moot. *See State ex rel. Johnson v. Williams*, 114 Wis. 2d 354, 356, 338 N.W.2d 320 (Ct. App. 1983).

amended complaint. Moreover, as the circuit court correctly noted, there was a photograph included with the governor's warrant "that appeared to be the same person that's in court today."

Our independent review of the record discloses no other issues of arguable merit. Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Jefren Olsen is relieved of further representing Turner in this matter.

Diane M. Fremgen
Clerk of Court of Appeals