

No. 32875 – State of West Virginia ex rel. Pamela Jean Games-Neely v. Honorable David H. Sanders, Judge of the Circuit Court of Berkeley County, and Jason Eric VanMetre

FILED

July 18, 2006

released at 10:00 a.m.

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Justice, concurring:

I concur to the majority opinion because I believe that it properly construes W.Va. Code § 5-1-11(d), the applicable statute in this case, and reaches a common sense result.

The dissenting opinion asserts that W.Va. Code § 5-1-11(d) should be read and applied as preserving this State's right to proceed with the prosecution of a defendant *after* he or she has been extradited to a demanding state and later returned to the asylum state. The problem with this construction is that it does not accord with the plain language of the statute. According to W.Va. Code § 5-1-11(d), in part.

Nothing in this article contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for an offense committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any offense committed within this state[.]

As noted in the majority opinion, while *one* purpose of this statute is intended to do what the dissenting opinion indicates, to regain custody of a defendant after extradition, the disjunctive “or” prior to offering the remedy of regaining custody of a defendant “clearly

demonstrates that the former portion of the statute refers to trying a demanded person before he or she is permitted to leave the state.” The dissenting opinion would have this Court completely disregard the first portion of the statute in clear contravention of our rules of statutory construction.

In addition, the writer of the dissenting opinion accuses the majority of ignoring the second paragraph of W.Va. Code § 5-1-11(b). This is not true. As clearly explained in the majority opinion, W.Va. Code § 5-1-11(b) simply does not address the instant facts – waiver of extradition by an individual who has also been charged with committing a crime in West Virginia.

Finally, the writer of the dissenting opinion inaccurately characterizes the majority opinion as permitting a prosecuting attorney solely to decide questions relating to waiver of extradition. To the contrary, the majority properly construes the applicable statute to preserve the right, power, and privilege of this State to try a person charged with a crime before that person is permitted to leave the State. Significantly, as noted in the majority opinion, the result of the position advocated by the writer of the dissenting opinion would leave the decision of whether a defendant may be extradited to another state, prior to prosecution in this State, entirely up to the defendant. Such a result would be absurd and certainly not what the Legislature intended.

Accordingly, for the reasons set forth above, I concur.