

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**William Nesbitt, Petitioner
Below, Petitioner**

vs) No. 11-0829 (Gilmer County 11-C-5)

**Shannon Markle, Administrator,
Respondent Below, Respondent**

FILED

**February 13, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MEMORANDUM DECISION

Petitioner William Nesbitt appeals the circuit court order denying his habeas corpus petition wherein he argued against extradition to Alabama. This appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The State has filed its response.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the appendix presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On appeal, petitioner argues the same assignments of error in support of habeas relief that he argued before the circuit court. Specifically, he argues that the circuit court erred in determining that the warrant issued was supported by sufficient information; that the original warrant was sufficient on its face; that the original warrant issued by Alabama was valid; that the information provided by Alabama established petitioner did in fact violate his parole; and that the court had no jurisdiction.

The State responds, arguing that the warrant was supported by sufficient information, including an affidavit from a Gilmer County Deputy Sheriff. The State also argues that the warrant was sufficient on its face, as probable cause is not required to authorize extradition, and the warrant was authorized by the Alabama State Pardons and Paroles Board. Furthermore, the State argues that the original Alabama warrant was valid, because although an accompanying letter indicated that the warrant should be returned if not executed within

sixty days, nothing on the face of the warrant invalidated said warrant if it was not executed within the sixty day time period. Finally, the State argues that petitioner failed to meet his burden in showing that he did not violate his parole, as he failed to show that Alabama did not have probable cause to find such parole violation. The State argues that the circuit court did not err in denying habeas relief.

As to the first four assignments of error, this Court notes that petitioner argued these same grounds before the circuit court. Upon a review of the arguments and record on appeal, we conclude that the circuit court's order is not contrary to law or written policy, clearly wrong, arbitrary or capricious, or characterized by an abuse of discretion. We attach and incorporate by reference the circuit court's well-reasoned "Order Denying Habeas Corpus Petition" entered on April 15, 2011.

As to the final assignment of error, wherein petitioner argues that the circuit court erred by finding that it had no jurisdiction, petitioner requests that this Court adopt a "special circumstances doctrine" akin to the federal courts. Petitioner argues that it is unfair to send him back to Alabama because his sentences in Alabama are illegal and not in conformity with the sentencing statutes, and he has no relief, as he has previously exhausted his state court remedies. If this Court chooses not to enact a special circumstances doctrine, petitioner argues that he will be extradited to Alabama to serve an illegal sentence.

The State responds to this argument, stating that no such special circumstances exception exists, and that a West Virginia court cannot interpret Alabama state law nor invalidate a sentence imposed by the State of Alabama. Further, this type of review is not allowed in a habeas corpus proceeding relating to extradition.

This Court has stated:

In habeas corpus proceedings instituted to determine the validity of custody where petitioners are being held in connection with extradition proceedings, the asylum state is limited to considering whether the extradition papers are in proper form; whether there is a criminal charge pending in the demanding state; whether the petitioner was present in the demanding state at the time the criminal offense was committed; and whether the petitioner is the person named in the extradition papers.

Syl. Pt. 2, *State ex rel. Mitchell v. Allen*, 155 W.Va. 530, 185 S.E.2d 355 (1971). Petitioner has previously appealed his convictions in Alabama and has been unsuccessful. Further review of the Alabama sentences is not allowed in a West Virginia habeas corpus proceeding, and this Court declines to adopt a "special circumstances" doctrine under the facts of this case.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: February 13, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh