

SHERIFF'S SALES, cont.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, June 22, 1981 at 4:00 P.M. E.S.T. Otherwise, all money previously paid will be forfeited and the property will be resold at the hour at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff

Franklin County, Chambersburg, PA

IN RE: THE INTERSTATE RENDITION OF HOFFMAN, C.P.
Franklin County Branch, A.D. 1981-50

Habeas Corpus - Uniform Criminal Extradition Act - Evidence of Equitable Grounds for Writ.

1. Where the petitioner was afforded hearings on charges against him, was represented by counsel, was arrested on a Governor's Warrant, and only thereafter elects to test the legality of the arrest, the fact the Commonwealth did not comply with provisions of the Uniform Extradition Act concerning time for commitment of an individual is not a fatal defect so as to require issuance of a writ of habeas corpus.

2. The Court of Common Pleas has no discretionary authority vested in it to consider any equitable grounds in determining whether a writ of habeas corpus shall issue.

Deborah K. Hoff, Esq., Counsel for Petitioner

John F. Nelson, Esq., Assistant District Attorney, Counsel for Respondent

OPINION AND ORDER

KELLER, J., April 3, 1981:

The petitioner, Russell A. Hoffman, Jr., was apprehended on a fugitive warrant on September 22, 1980 by Trooper James C. Harding of the Pennsylvania State Police, and was immediately taken before District Magistrate J. William Stover for preliminary arraignment. He was committed to the Franklin County Prison in lieu of bond and was released on September 25, 1980 upon posting a \$500.00 bond. At the preliminary hearing scheduled before District Magistrate Stover on October 17, 1980 the petitioner appeared with counsel and waived the hearing.

On November 19, 1980 the Governor of the State of California issued a requisition addressed to the Governor of Pennsylvania demanding the issuance of a Governor's Warrant for the arrest of the petitioner and delivery to Larry Gillick and/or agent who was authorized to transport him to the State of California to be dealt with according to law. On January 26, 1981 Governor Thornburgh issued his Governor's Warrant commanding that the petitioner be taken into custody. The Sheriff of Franklin County executed the Governor's Warrant on February 2, 1981, and the petitioner was immediately taken before the undersigned, a Judge of the Court of Common Pleas, 39th Judicial District, where his rights under the Uniform

Extradition Act were explained to him, and he was given a reasonable time to file a petition for a writ of habeas corpus challenging the legality of his arrest. The petitioner was represented by counsel in his appearance before the court.

The petitioner's petition for a writ of habeas corpus was presented to the Court on February 12, 1981, and an order signed the same date setting March 16, 1981 at 1:30 P.M. as the date and time for hearing and argument. The petition was filed of record on February 13, 1981. The answer of the Commonwealth to the petition was executed and acknowledged on March 16, 1981, and presented to the Court at the time of hearing.

At the hearing counsel for the Commonwealth and the petition stipulated to the admission of the following documents:

1. The Governor's Warrant executed by the Governor of the Commonwealth of Pennsylvania on January 26, 1981 on requisition of the Governor of California.

2. The appointment by the Governor of California of Larry Gillick and/or agent to receive the petitioner and convey him to the State of California.

3. The requisition of the Governor of the State of California for the arrest of the petitioner as a fugitive from justice and delivery to Larry Gillick and/or agent for transportation to California.

4. Exemplified copies of the records of the Butte County Probation Office, bench warrant issued by a Judge of the Superior Court of California on February 13, 1980 and order revoking probation dated June 24, 1980, and signed by a Judge of the Superior Court of California.

5. Application of the District Attorney of Butte County, California addressed to the Governor of the State of California for requisition upon the Governor of the State of Pennsylvania for the arrest and rendition of the petitioner.

6. Affidavit of the District Attorney of Butte County, California that the petitioner was found guilty of fraudulent receipt of aid for a child, a felony; violated his probation; said probation was revoked and a warrant for the petitioner's arrest issued.

7. Affidavit of Arthur Gammin, a probation officer in the

Butte County Probation Office, to whom the petitioner was assigned identifying the petitioner by photograph and fingerprint card, and that the petitioner's probation was vacated and a bench warrant was issued for his arrest on June 24, 1980.

8. A fugitive warrant issued by District Magistrate Stover on September 22, 1980.

Counsel for the Commonwealth and the Petitioner stipulated in addition to the allegations in the petition admitted by the Commonwealth to the following facts:

1. The petitioner was charged with the crime of welfare fraud, a felony, in California as alleged in the various papers admitted in evidence.

2. The petitioner is, in fact, the person who was charged and convicted of welfare fraud and he is the person named in the bench warrants issued in the State of California.

3. The petitioner was in California at the time the welfare fraud offense was committed.

4. Following the preliminary hearing on September 22, 1980, and his admission to bail on September 25, 1980, there were no other proceedings except a preliminary hearing originally scheduled for October 17, 1980, and rescheduled for October 22, 1980 at which the defendant appeared with counsel and waived the preliminary hearing. Nothing else occurred until the issuance of the Governor's Warrant which was served on February 2, 1981.

5. The petitioner has remained free on bond since September 25, 1980.

Paragraph 7(c) of the petition for a writ of habeas corpus alleges:

"(i) Petitioner is the father and sole support and guardian of 4 minor children; rendition of Petitioner would require placement of said children in foster homes at the expense of the taxpayers of Franklin County.

"(ii) Any restitution due to the State of California could be satisfied via the Probation Department of Franklin County, Pennsylvania; any supervisory regulation could be undertaken by the Probation Department of Franklin County.

"(iii) The crime alleged under the laws of the State of Cali-

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fornia would be classified in the Commonwealth of Pennsylvania as a misdemeanor with maximum penalties of 1 year and/or \$1,000.00."

Counsel for the petitioner offered to prove in support of paragraph 7(c), supra:

1. That the petitioner is the father and sole support of 4 minor children, and his rendition to California would require placement of the said 4 children in foster homes at the expense of the taxpayers of Franklin County.

2. The entire amount of restitution due to the State of California has been raised, and could be paid via the Probation Department of Franklin County to the State of California; and any supervision required by the State of California could be undertaken and provided by the Probation Department of Franklin County.

3. The welfare fraud crime alleged under the law of the State of California as a felony would be classified in the Commonwealth of Pennsylvania as a misdemeanor with a maximum penalty of one year and/or \$1,000 fine.

4. Many citizens of Franklin County have expressed the opinion that the petitioner should be permitted to remain in Franklin County, and a petition to that effect has been signed by 500 individuals and is available for presentation to the Court.

5. The local newspapers have published articles in support of permitting the petitioner to remain in Franklin County. Copies of the newspaper articles were offered to the Court.

Assistant District Attorney Nelson, while demanding proof of the facts asserted by counsel for the petitioner, objected to the Court's consideration of any of them on the grounds that whether true or not they are irrelevant to the issue of whether a writ of habeas corpus should issue.

Subsequent to the foregoing the hearing was continued to permit counsel for the Commonwealth and the petitioner to prepare and file briefs on the two issues of law raised by the petitioner.

ISSUES

I. Whether the petitioner's proffered evidence of equitable

grounds for the issuance of the writ is admissible?

II. Whether the rendition papers were presented within the statutory time period permitted by the provisions of the Uniform Criminal Extradition Act; and if not, whether under the facts of the case at bar the writ must issue and the petitioner be discharged.

DISCUSSION

The parties are in agreement as to the relevant dates when all of the events in this extradition proceeding occurred. The petitioner contends that non-compliance with the time schedules established by the Uniform Extradition Act is fatal to the proceeding, and the writ of habeas corpus must issue and he must be released. If the time schedule established by the Extradition Act has been violated, and if the petitioner's contention that such a violation is fatal to the extradition proceeding is correct, then the relevancy of the evidence supporting the equitable grounds for relief would be moot. We will, therefore, address ourselves to the second issue above referred to first.

The Uniform Criminal Extradition Act, Act of 1941, July 8, P.L. 288, Sec. 1, et seq., as amended, 42 Pa. C.S.A. 9121, et seq., has been adopted by 48 of the 50 states including the Commonwealth of Pennsylvania and the State of California. The Act provides inter alia:

Section 9123: "Subject to the provisions of this subchapter, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the governor of this Commonwealth to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this Commonwealth."

Section 9128: "If the governor decides that the demand should be complied with he shall sign a warrant of arrest which shall be sealed with the state seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance."

Section 9131: "No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this Commonwealth who shall inform him of the

demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel, and, if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall affix a reasonable time to be allowed him within which to apply for a writ of habeas corpus...."

Section 9134: "Whenever any person within this Commonwealth shall be charged on the oath of any credible person before any judge or issuing authority of this Commonwealth with the commission of any crime in any other state, and,... having broken the terms of his bail, probation or parole,... and is believed to be in this Commonwealth, the judge or issuing authority shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein wherever he may be found in this Commonwealth and to bring him before the same or any other judge or issuing authority who or which may be available in, or convenient of, access to the place where the arrest may be made to answer the charge..., and a certified copy of the sworn charge...upon which the warrant is issued shall be attached to the warrant."

Section 9136: "If from the examination before the judge or issuing authority it appears that the person held is the person charged with having committed the crime alleged, and,..., that he has fled from justice, the judge or issuing authority must, by warrant reciting the accusation, commit him to the county jail for such a time, not exceeding thirty days, and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense unless the accused give bail as provided in Section 9137...."

Section 9137 authorizes the judge or issuing authority in this Commonwealth to admit the person arrested to bail by bond with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified and for his surrender to be arrested upon the warrant of the governor of the Commonwealth.

Section 9138: "If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or issuing authority may discharge him or may recommit him for a further period, not to exceed 60 days, or a judge or issuing authority may again take bail for his appearance and surrender, as provided in Section 9137 (relating to bail), but within a period not to exceed 60 days after the date of such new bond."

Section 9141: "The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor, or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as provided in this subchapter shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime."

Applying the facts evidenced by the various documents admitted in evidence by stipulation of counsel, and the facts stipulated by counsel, we may properly conclude:

1. Trooper James C. Harding of the Pennsylvania State Police appeared on September 22, 1980, before District Magistrate J. William Stover, an issuing authority of this Commonwealth, and charged the petitioner with the commission of a crime in California and has taken refuge in Pennsylvania. District Magistrate Stover issued a warrant for the arrest of the petitioner on the same date, and Trooper Harding did on that date arrest the petitioner. (Section 9134)

2. The petitioner was on September 22, 1980 taken before the District Magistrate for preliminary arraignment; bond was set at \$500.00 and upon failure of the petitioner to make bond he was committed to the Franklin County Prison, where he remained until he posted the prescribed bail on September 25, 1980. (Sections 9136 and 9137).

3. The petitioner appeared with counsel at a preliminary hearing before the issuing magistrate on October 22, 1980 which had been rescheduled from October 17, 1980, and at that time waived the preliminary hearing. The appearance of the petitioner with his counsel before the issuing magistrate occurred on the 31st day after his initial arrest.

4. Nothing more occurred in connection with the extradition proceedings until the issuance of the requisition of the Governor of California addressed to the Governor of Pennsylvania dated November 19, 1980, a period of 50 days after the arrest.

5. The warrant of the Governor of Pennsylvania was issued on January 26, 1981, a period of 126 days after the petitioner's arrest.

6. The Governor's Warrant was served upon the petitioner by the Sheriff of Franklin County on February 2, 1981, and on that same date he appeared before the undersigned with his counsel, Deborah A. Hoff, Esq., and was advised by the Court

of the demand made for his surrender, of the crime with which he was charged, of his right to counsel, and of his right to test the legality of his arrest. On request of petitioner and/or his counsel the Court granted the petitioner ten (10) days from the date of the hearing to prepare and file his petition for a writ of habeas corpus. (Section 9131)

7. The petition for the writ of habeas corpus presented to this Court on February 12, 1981 was the first such proceeding initiated by the petitioner.

8. The petitioner has conceded that he was in the State of California at the time the welfare fraud offense was committed; that he was charged with that crime in California; and that he is, in fact, the person who was charged and convicted of that crime; and that he is the person who was named in the bench warrants issued by the California Court.

9. No judge or issuing authority of the Commonwealth of Pennsylvania at any time extended the time of the petitioner's commitment or reset his bail as provided in Section 9138.

We, therefore, must conclude that the facts establish that the Commonwealth of Pennsylvania did not comply with the provisions of the Uniform Extradition Act which limit the time for commitment of an individual to not more than thirty (30) days, and with an extension of sixty (60) days while awaiting the arrest of the accused under a warrant of the governor on appropriate requisition. The second phase of the issue is whether such non-compliance constitutes a fatal defect in the proceeding requiring the issuance of the writ and the release of the petitioner.

It should be noted that the Petitioner raised no question as to the validity of the requisition of the Governor of the State of California or as to the Governor's Warrant issued by the Governor of Pennsylvania.

In support of the petitioner's position he cites *Commonwealth ex rel. Knowles v. Lester*, 456 Pa. 423 (1974), and *Commonwealth ex rel. Coffman v. Aytch*, 238 Pa. Super. 584 (1976).

In *Knowles* the defendant was charged on December 8, 1971 with receiving and bringing stolen property into the Commonwealth. At the same time a warrant was issued charging him with being a fugitive from Florida, and that warrant was lodged as a detainer, but was not executed until April 28, 1972 when the defendant was arraigned and charged with being a

fugitive. On May 6, 1972 the Pennsylvania criminal charges were withdrawn and on May 12th a preliminary hearing on the fugitive charge was held.

At or about the time of the preliminary hearing on the fugitive charge *Knowles* filed a petition for a writ of habeas corpus which was granted by the trial court. The Superior Court reversed on the theory that the defendant's arrest on the fugitive charge did not take place until April 28, 1972 when the warrant was executed and he was arraigned so that the defendant's petition for a writ was premature having been filed when he had not been confined for more than thirty (30) days as permitted by the Uniform Act. On appeal the Supreme Court of Pennsylvania reversed the Superior Court and affirmed the trial court concluding that the defendant's arrest on the fugitive warrant occurred on the date of its filing, and 141 days elapsed between the date the detainer was filed and the preliminary hearing on the fugitive warrant in violation of the Uniform Criminal Extradition Act's proscription against confinement for more than thirty (30) days. There is no indication that a Governor's Warrant was ever issued in the case.

In *Coffman* the defendant was arrested and incarcerated on November 11, 1973 on local charges of receiving stolen property and five detainees were lodged between November 19 and November 29, 1973. On November 29, 1973 the Pennsylvania charges were dismissed, and the defendant's commitment was continued on the basis of the fugitive detainees. On August 19, 1974 the defendant was arraigned on three of the five fugitive charges and bail set on them. On the same date *Coffman* filed the first of two habeas corpus petitions claiming violation of the Uniform Criminal Extradition Act in that during the nine-month delay no Governor's Warrant was produced and no arraignment held. On August 23, 1974 a Governor's Warrant was produced on the Illinois detainer. All other warrants having been discharged or dismissed. On November 4, 1974 the trial court denied the defendant's habeas corpus petition and ordered his extradition.

The Superior Court reversed the trial court and ordered the defendant discharged on the grounds that the Uniform Act requires the production of a Governor's Warrant within a maximum of ninety (90) days after the date of the lodging of the detainer. The court specifically held:

"Since a Governor's Warrant went unproduced for a period far in excess of the maximum allowable time in this case, the lower court should have granted appellant's petition for habeas corpus and appellant should have been discharged."

To the contrary the Commonwealth relied on *Commonwealth ex rel. Myers v. Case*, 250 Pa. Super. 242, 378 A.2d 917 (1977); *Commonwealth ex rel. Holcombe v. Strode*, Pa. , 402 A.2d 1067 (1979), and *Commonwealth v. Brown*, Pa. Super. , 421 A.2d 1131 (1980).

In *Myers* the defendant was arrested on a local bad check charge on August 9, 1975, and on the same day or three days later he was arrested and arraigned on a fugitive charge with a fugitive detainer being lodged with Pennsylvania authorities. When the Commonwealth did not receive the Governor's Warrant and other necessary extradition documents within thirty (30) days after the defendant was taken into custody, the district justice of the peach recommitted him for an additional sixty (60) days pursuant to the Uniform Act. The Commonwealth received the Governor's Warrant on September 17, 1975, which was within the ninety (90) day period, but it was not served upon the defendant until fifteen (15) days after the ninety (90) day period had expired because the defendant was then serving a sentence in county prison. Immediately upon execution of the Governor's Warrant the defendant was advised by the trial court of his right to test the legality of his arrest, and on December 1, 1975 he petitioned the Court for a writ of habeas corpus which was granted by the trial court.

On appeal the Superior Court reversed and ordered extradition distinguishing *Knowles*, supra, on the grounds that *Myers* had been preliminarily arraigned at the time of his initial confinement and hearings had been held at the time of his arrest on the Governor's Warrant and on his petition for habeas corpus. The Superior Court concluded that the defendant's constitutional rights were not violated by the procedures employed by the Commonwealth and that the fifteen (15) day delay in violation of the Uniform Act could only be classified as technical.

Judge Spaeth in a concurring Opinion held inter alia:

"...absent a violation of the rule of *Commonwealth ex rel. Knowles v. Lester*, 456 Pa. 423, 321 A.2d 637 (1974), habeas corpus relief is warranted only when sought after the expiration of the prescribed period (whether 30 or, if extended, 90 days) and before a Governor's Warrant is executed..." (Page 249)

In *Holcombe* the defendant was arrested on April 8, 1977 as a fugitive and on April 9, 1977 was taken before a local magistrate where a complaint was filed charging him with being a fugitive from justice in the State of New York. On May 23,

1977 the Commonwealth withdrew the fugitive complaint and on the same date lodged a new fugitive from justice complaint. On June 1, 1977 a preliminary hearing was held on the new complaint and the defendant was committed to the county prison for a period of thirty (30) days pursuant to the Uniform Act. On June 23, 1977 he was arrested on a warrant issued by the governor. On July 7, 1977 the defendant filed his petition for a writ of habeas corpus contending that he was entitled to relief because he was incarcerated in excess of thirty (30) days without an extension of time as authorized by the Uniform Act. The petition was denied and extradition ordered.

On appeal the trial court's decision was affirmed. The Superior Court specifically approved the Commonwealth's procedure of withdrawing the first fugitive complaint because the necessary requisition documents and Governor's Warrant had not yet arrived. It also held:

"Furthermore, even were we inclined to agree with appellant's contention that he was incarcerated beyond the thirty (30) day period provided for in 19 P.S. Sec. 191.15, we believe appellant's failure to raise this issue prior to his arrest under the Governor's Warrant precludes relief. Although appellant was represented by counsel from at least April 14, 1977, his petition for a writ of habeas corpus contesting the validity of his detention was not filed until July 7, 1977, or two weeks after his arrest pursuant to the valid Governor's Warrant on June 23, 1977. As Judge Spaeth, citing several decisions from other jurisdictions has stated: 'Absent a violation of the rule of Commonwealth ex re. *Knowles v. Lester...*, habeas corpus relief is warranted only when sought after the expiration of the prescribed period (whether thirty or, if extended, ninety days) and before a Governor's Warrant is executed.' ...In short, once the relator has been arrested under the authority of a valid Governor's Warrant, the legality or illegality of the prior extradition proceedings becomes moot..." (Page 1069)

In *Brown* the defendant was arrested on December 15, 1978, and brought before a District Magistrate where a criminal complaint was filed charging him with being a fugitive from justice. The magistrate set December 22, 1978 as the hearing date and fixed bail, which the defendant posted. At the December 22 hearing the defendant was bound over for court, and on January 8, 1979 a preliminary hearing on extradition proceedings was held before the Court of Common Pleas at which time the defendant was represented by counsel and was advised of his right to file a habeas corpus petition, and his bail was continued. On February 2, 1979 the petition for writ of

habeas corpus was presented presumably alleging that more than thirty (30) days had elapsed since the initial arrest, and the Commonwealth had neither served the Governor's Warrant nor secured an extension of sixty (60) days. At the February 12, 1979 hearing on the petition the Commonwealth introduced requisition papers from West Virginia and the Pennsylvania Governor's Warrant, together with evidence identifying the defendant as the individual who committed the alleged crime in West Virginia. The defendant's petition was denied and extradition ordered.

On appeal the Superior Court affirmed the trial court; noted the thirty (30) day provision of Section 9136 of the Uniform Act; noted the Supreme Court decision in *Knowles*, supra; noted that as in *Knowles* there was no dispute that no extension of time under Section 9138 was granted, and assumed that the thirty (30) day rule applied although the suspected fugitive had been admitted to bail. The appellate court then held:

"At the same time, however, this case differs from *Knowles* in two crucial respects. Unlike in *Knowles*, this record is clear that appellant was afforded hearings on the charges against him. Most significantly, at the hearing on appellant's petition for a writ of habeas corpus, held less than two months after appellant's arrest, the Commonwealth introduced both requisition papers and the Pennsylvania Governor's Warrant. Although at the habeas corpus hearing appellant questioned the Governor's Warrant, the Court of Common Pleas determined the documents are in order. Appellant now in no way questions the validity or effect of the Governor's Warrant.

"Recently this court has adopted the following rule fashioned by Judge Spaeth, concurring in Commonwealth ex rel. *Myers v. Case...*:

'Absent a violation of (*Knowles*), habeas corpus relief is warranted only when sought after the expiration of the prescribed period (whether thirty or, if extended (pursuant to Section 9138), ninety days) and before a Governor's Warrant is executed.'

"Commonwealth ex rel. *Holcombe v. Strobe...* see also *Commonwealth v. Rowe* [264 Pa. Super. 67, 398 A.2d 1060 (1979).] 'In short once the relator has been arrested under the authority of a valid Governor's Warrant, the legality or illegality of the prior extradition proceedings become moot...' ...We are satisfied that this rule applies here, where at the habeas corpus hearing held less than two months after

- (2) Grant the requested relief where the responding party has failed to comply;
- (3) Permit oral Argument, but only by the complying party;
- (4) Grant such other relief or impose such other sanctions as it shall deem proper.

RULE 58. With the approval of the Court, oral Argument may be dispensed with by agreement of the parties and the matter shall be submitted to the Court on the briefs filed,

PETITIONS, MOTIONS AND RULES

RULE 160. Motions and Petitions may be made or presented to the Court at any session thereof or in the chambers of the Motion Judge at such times as the Court may set.

RULE 161. Motions made, Petitions presented and Rules taken, unless permitted by the Court to be made or taken orally, shall be in writing and shall be verified if the facts do not appear on the face of the record, in the papers on file, or have not been agreed upon by the parties in writing.

RULE 162. Motions made and Petitions presented in writing to the Court shall contain a reference to any applicable local or state rule of procedure or statute with reference to which such Motion or Petitions is presented.

RULE 163. The proper Order to be made by the Court upon a Motion or Petition shall be prepared by counsel and submitted to the Court for approval, and if approved by the Court, it shall be filed of record immediately after presentation to the Court.

RULE 164. Petitions and Motions, other than those made during the actual trial of a case, shall be served forthwith upon the adverse party pursuant to the Pennsylvania Rules of Civil Procedure.

RULE 165. All Rules issued as of course, except where an Act of Assembly or Rule of Court provides otherwise, shall be returnable twenty (20) days after service.

RULE 166. The moving party in all post-trial and post-hearing Motions or Petitions should, if argument thereon is with reference to the testimony, include a request for transcription of the testimony or such part thereof as it may be agreed upon by the parties to have transcribed and in such case the Order shall include a direction to the Court Reporter for transcription thereof within a specified time. A copy of the Court's Order shall be served forthwith upon the Court Reporter by ordinary mail by the moving party.

appellant's arrest, the Commonwealth produced requisition papers and a Governor's Warrant adjudged in order and now in question. Thus we reject appellant's claim that the writ should have been granted." (Page 1134)

In the case at bar, the petitioner was afforded hearings on the charges against him; was represented by counsel; was arrested on a Governor's Warrant; and only thereafter elected to test the legality of his arrest. On the basis of the guidance given us in the more recent cases of *Myers*, *Holcombe* and *Brown*, supra, we conclude that the constitutional rights of the petitioner have been adequately protected, and that the failure of the Commonwealth to procure the Governor's Warrant until 126 days after the petitioner's arrest, and to execute the same until 134 days after his arrest, is not a fatal violation of the Uniform Criminal Extradition Act requiring the issuance of the writ of habeas corpus and the release of the petitioner.

We turn now to the petitioner's second issue.

The petitioner contends that this Court should permit him to introduce into evidence:

1. The fact that he is the father and sole support of four minor children who will have to be placed in foster homes at taxpayers' expense if he is extradited.

2. The fact that he has funds available to pay in full all fines, costs and restitution due California.

3. The fact that the Franklin County Probation Department could provide supervision of him if probationary supervision was transferred from California.

4. The fact that the welfare fraud conviction, while a felony in California would be only a misdemeanor in Pennsylvania.

5. The fact that community sentiment as evidenced by a citizen petition and newspaper articles supports rejection of extradition because he has been a productive and lawabiding citizen since his arrival in Pennsylvania in June 1980, and undue hardship to him, his family and the taxpayers could readily be avoided.

This evidence would, he urges, persuade the Court that equitable consideration in the case at bar is so overwhelming that we would be required in the exercise of our judicial discretion to grant the writ and discharge him.

The fundamental error in petitioner's contention is his assumption that this Court has any discretionary authority vested in it in extradition matters. As recently as August 15, 1980 in *Commonwealth v. Brown*, supra, Justice Samuel J. Roberts of the Supreme Court of Pennsylvania sitting by designation as a member of a three judge panel of the Superior Court and speaking for a unanimous panel held:

"As we have summarized, 'Extradition is a constitutionally mandated process and *will be ordered* if the subject of the extradition (1) is charged with a crime in the demanding state, (2) is a fugitive from the demanding state, (3) was present in the demanding state at the time of the commission of the crime, and (4) if the requisition papers are in order.'" (Page 1134) (Italics ours)

In our judgment the United States Constitution, the Uniform Criminal Extradition Act and the decisions of the Appellate Courts of Pennsylvania coalesce to eliminate discretionary authority on the trial court level in extradition proceedings, and to mandate extradition if the Commonwealth meets the four tests identified by Justice Roberts in *Commonwealth v. Brown*, supra. [See also *Commonwealth ex rel. Marshall v. Gedney*, 478 Pa. 299, 386 A.2d 942 (1978).] Therefore, we also conclude this Court is without jurisdiction to consider equitable considerations or equitable grounds for granting a writ of habeas corpus in proceedings of this unique nature. Consequently, the proffered evidence is irrelevant and the Commonwealth's objection to it is sustained.

Lest the petitioner and those who have joined with him in his efforts to resist extradition conclude that the law governing extradition is unreasonable and unjust, we are constrained to observe:

1. The founding fathers of these United States recognized the necessity of returning fugitives from justice to the state having jurisdiction of the crime and provided for extradition in Article IV Section 2 of the United States Constitution.

2. The adoption of the Uniform Criminal Extradition Act by the vast majority of the states of these United States evidences a recognition of the necessity for a uniform practical and expeditious procedure for the return of fugitives to the proper jurisdiction, i.e., the scene of the crime, for trial and sentencing according to the laws of that state.

3. If the many courts of the fifty states and the various territories had jurisdiction to inquire into the substantive and

procedural laws of sister jurisdictions, delay, expense, the frustration of justice, and the escape of fugitives would be the most likely result.

4. In the case at bar the petitioner concedes his conviction of a felony in California, that a bench warrant has issued for him for probation violation; but he urges this Court to rule that the people of California must be satisfied with a payment of money rather than the enforcement of their law by their courts. We do not believe the people of Pennsylvania would willingly accept such long distance justice, and we see no justifiable reason to attempt to assume such extraterritorial jurisdiction here.

5. Also in the case at bar, the petitioner would have us consider the hardship imposed upon him, his family and the taxpayers by ordering extradition. However, he ignores the obvious, for we can think of no time when the arrest, the trial, and the incarceration or probation of a criminal defendant does not impose such hardships. The tragedy is that he did not consider such hardships before the commission of the criminal act.

ORDER OF COURT

NOW, this 3rd day of April, 1981, the petition of Russell A. Hoffman, Jr. for a writ of habeas corpus is denied.

The petitioner shall be delivered into the custody of Larry Gillick and/or agent who are authorized to receive him and convey him back to the State of California.

Exceptions are granted the petitioner.

GEESAMAN ET UX. VS. ZONING HEARING BOARD, ET AL. C.P. Franklin County Branch, Misc. Doc. Vol. X, Page 348

Zoning - Appeal From Zoning Hearing Board - Definition, of "Survey" and "Potential" - Abuse of Discretion

1. Where a zoning ordinance deals with construction in flood hazard areas, the requirement of an on-site survey does not necessarily require a courses and distance measure on a draft. Survey may mean an attentive or particular view of the premises with the design to ascertain the conditions, quality or value.