

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

July 14, 1983

Donald L. Allen, Commissioner
Department of Corrections
State House Station #111
Augusta, Maine 04333

Dear Commissioner Allen:

This will respond to your memorandum of June 28, 1983 in which you seek the Opinion of this Office as to the validity of a requirement that a person convicted of a crime sign a waiver of extradition as a condition to release on probation. For the reasons discussed below, it is the conclusion of this Office that such a waiver is valid and enforceable and eliminates the necessity of formal extradition proceedings.

The subject of interstate extradition is expressly addressed in Article IV, § 2, cl. 2 of the United States Constitution,^{1/} and in federal statutory law. See 18 U.S.C. §§ 3182, 3194, 3195. Moreover, with but a few exceptions,

1/ Art. IV, § 2, cl. 2, U. S. Const. provides:

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

virtually every state in the Union, including Maine, has adopted the Uniform Criminal Extradition Act which, by its very terms, "shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." Uniform Criminal Extradition Act § 27, 11 Uniform Laws Annotated (Master Edition, 1974). See also 15 M.R.S.A. § 229; Olson v. Thurston, 393 A.2d 1320, 1323 (Me. 1978); Sawyer v. State, 382 A.2d 1039, 1041 (Me. 1978).

Both the Uniform Act and Maine's amended version of it provide that a parole or probation violator is a fugitive from justice and is extraditable on that basis. Uniform Act § 3; 15 M.R.S.A. §§ 201(4)(B) and 203(2). Additionally, both Acts provide a statutory procedure whereby a fugitive may waive extradition and be returned to a demanding state. Section 25-A of the Uniform Act is substantially identical to 15 M.R.S.A. § 226 which provides in relevant part:

Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 207 and 208 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this State a writing which states that he consents to return to the demanding state. Before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his right to await the issuance and service of a warrant of extradition and to contest extradition following issuance of the warrant of the Governor as provided for in section 210. . . . Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this State.

(Emphasis supplied).

In view of the foregoing, it is clear that the waiver procedure established by the Extradition Act is not exclusive and that states are free to adopt and implement alternative waiver procedures. In the context of release on parole or probation, several states have attempted to condition such release on an agreement to waive formal extradition should that person's return be requested from another state. With a single exception,^{2/} courts in other jurisdictions which have considered the validity of these waiver agreements have upheld them. See, e.g., Pierson v. Grant, 527 F.2d 161 (8th Cir. 1975); Forester v. California Adult Authority, 510 F.2d 58 (8th Cir. 1975); Cook v. Kern, 330 F.2d 1003 (5th Cir. 1964); Ex Parte Johnson, 610 S.W.2d 357 (Tex. Crim. App. 1981); Ex Parte Williams, 472, S.W.2d 779 (Tex. Crim. App. 1971); White v. Hall, 15 Md. App. 446, 291 A.2d 694 (1972); Schwartz v. Woodahl, 487 P.2d 300 (Mont. 1971); State ex rel. Swyston v. Hedman, 179 N.W.2d 282 (Minn. 1970); State ex rel. Morris v. Tahash, 115 N.W.2d 676 (Minn. 1962); In Re Saucier, 122 Vt. 208, 167 A.2d 368 (1961); Ex Parte Casemento, 24 N.J. Misc. 345, 49 A.2d 437 (1946). See also In Re Klock, 133 Cal. App.3d 726, 184 Cal. Rptr. 234, 237-39 (1982, Feinberg, J., dissenting).

^{2/} In In Re Klock, 133 Cal. App.3d 726, 184 Cal. Rptr. 234, 237 (1982), a California Court of Appeals concluded "that the advance waiver of extradition. . . is ineffective as a waiver of extradition in California. To effect the petitioner's extradition it will be necessary for the state to invoke formal extradition proceedings as provided in . . . [California's extradition act]." In reaching this conclusion, the court stated that it agreed with the dissenter's view but that it was bound by prior decisions of the California Supreme Court which, the court said, should be reconsidered. Id. at 236-37. Klock is the only decision under the Uniform Criminal Extradition Act which has not upheld the validity and enforceability of advance waivers of extradition as a condition of parole or probation.

These decisions have flatly rejected the notion that the waiver provisions of the Uniform Criminal Extradition Act are exclusive. Moreover, they have recognized that the granting of parole or probation may be subject to reasonable conditions and that a requirement that a probationer waive, in advance, formal extradition proceedings in the event he is charged with a violation of the terms of his probation is both legitimate and reasonable. Finally, these decisions have refused to recognize any constitutional right on the part of a probation violator to circumvent the terms of an agreement he has previously made with the state.

Having entered into such agreement, it is not discernible how or in what manner his constitutional rights are violated when it is sought, upon a violation, to obtain his return. Assuming, however, contrary to what we think that any constitutional right is involved, it is waived by the agreement which the [probationer] makes with the state.

United States ex rel. Simmons v. Lohman, 228 F.2d 824, 826 (7th Cir. 1955).^{3/}

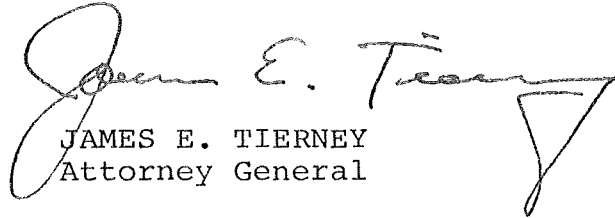
^{3/} See also Lascelles v. Georgia, 148 U.S. 537, 542 (1893):

The sole object of the provision of the Constitution and the act of Congress to carry it into effect is to secure the surrender of persons accused of crime, who have fled from the justice of a State, whose laws they are charged with violating. Neither the Constitution, nor the act of Congress providing for the rendition of fugitives upon proper requisition being made, confers, either expressly or by implication, any right or privilege upon such fugitives under and by virtue of which they can assert, in the State to which they are returned, exemption from trial for any criminal act done therein. No purpose or intention is manifested to afford them any immunity or protection from trial and punishment for any offences committed in the State from which they flee.

For all of the foregoing reasons, it is the Opinion of this Office that prior waivers of extradition as a condition of probation are enforceable and provide an alternative to extradition or waiver under Maine's version of the Uniform Criminal Extradition Act.

I hope this information is helpful to you, and please feel free to call upon me if I can be of further assistance.

Sincerely,



JAMES E. TIERNEY
Attorney General

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