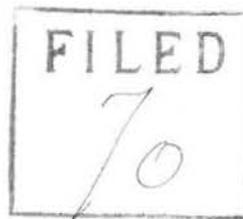


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EXTRADITION: A person paroled from one state and parole thereafter revoked, is a fugitive from justice within the purview of the extradition laws.

12-7  
December 6, 1933.



Hon. Guy B. Park,  
Governor of Missouri,  
State Capitol,  
Jefferson City, Mo.

Attention: Mr. Woodson Cockrell

Dear Sir:

This department is in receipt of your request for an opinion on the following state of facts:

"A was paroled from the state penitentiary of Illinois to a resident of the State of Missouri. While in the State of Missouri, the State of Illinois revoked this parole. Is A a fugitive from justice within the purview of the extradition laws?"

I.

A person who has been paroled by one state and whose parole is thereafter revoked is a fugitive from justice within the purview of the extradition laws.

The general rule of law with reference to this question is well stated in the case of Ex Parte Weinhouse, 216 S.W. 548, l.c. 549:

"The Constitution of the United States (Clause 2, Sec. 2, of article 4) provides that every person charged with a 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, etc. The Federal statute (Section 5278 R.S. (U.S. Comp. St. Sec. 10126) provides for the delivery of 'any person as a fugitive from justice'. It will be noticed that in the Constitution the expression is any person 'who shall flee from justice', while in the statute it is 'any person as a fugitive from justice'. But

the meaning is the same. Either to flee or be a fugitive would ordinarily mean that the accused had run away to avoid prosecution. But it seems not to have been interpreted that way. So that, though one had no thought of an escape or of avoiding a prosecution, if he be found in a state other than the one in which he committed the offense charged, he may be extradited under either the wording of the statute or the Constitution. *Roberts v. Reilly*, 116 U.S. 80, 6 Sup. Ct. 291, 29 L. Ed. 544; In the *Matter of Voorhees*, 32 N.J. Law, 141."

In the case of *State ex rel. Gaines, Agent, v. Westhues, Judge, et al* (Supreme Court of Mo.), 2 S.W. (2d) 612, 1.c. 613, the Court held that the motive in leaving the demanding state had no bearing on the question of whether or not a person was a fugitive from justice. The Court said:

"Petitioner's motive in leaving demanding state, if he did so, had no bearing on question whether he was fugitive from justice. That petitioner was fugitive from justice was shown prima facie by rendition warrant, and he had burden of proving that he was not in demanding state at time of commission of alleged crime."

This holding of the Supreme Court of Missouri is amplified in the case of *People ex rel. Leach v. Baldwin*, 174 N.E. 51, in which the Court said:

"What constitutes one a fugitive from justice has also been frequently considered. In *Appleyard v. Massachusetts*, 203 U.S. 222, 27 S. Ct. 122, 123, 51 L. Ed. 161, 7 Ann. Cas. 1073, and in *Biddinger v. Commissioners of Police*, 245 U.S. 128, 38 S. Ct. 41, 62 L. Ed. 193, it was held that 'a person charged by indictment or by affidavit before a magistrate with the commission within a state of a crime covered by its laws, and who, after the date of the commission of such crime, leaves the state--no matter for what purpose or with what motive, nor under what belief--becomes, from the time of such leaving, and within the meaning of the Constitution and the laws of the United States, a fugitive from justice, and if found in another state, must be delivered up by the governor of such state to the state whose laws are alleged to have been violated, on the production of such indictment or affidavit, certified as authentic

by the governor of the state from which the accused departed. Such is the command of the supreme law of the land, which may not be disregarded by any state' \*\*\*\*

The case of Albright v. Clinger (Supreme Court of Mo. 1921), 234 S.W. 57, while dealing with the question of one who violated his parole while in the State of Ohio and then fled to the State of Missouri, nevertheless, presents propositions of law which are applicable to the facts here under consideration. The Court said:

"One who is shown to have committed a crime in one state, and when sought for to be subjected to criminal process, is found in another state, is, under the rulings of the Supreme Court of the United States, a fugitive from justice. Ex parte Reggel, 114 U.S. 642, 5 Sup. Ct. 1148, 29 L. Ed. 250; Roberts v. Reilly, 116 U.S. 80, 6 Sup. Ct. 291, 29 L. Ed. 544. This showing constituted a prima facie proof of the fact that he was a fugitive. In re Cook, 49 Fed. 833; Hyatt v. N.Y., 188 U.S. 691, 23 Sup. Ct. 456, 47 L. Ed. 657; Marbles v. Creecy, 215 U.S. 63, 30 Sup. Ct. 32, 54 L. Ed. 92.

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The last two contentions under consideration are evidently made on the assumption that the relator's extradition is sought for violating a parole. While this may be regarded as a moving or immediate cause of his extradition, it is not the offense for which the State of Ohio demands his return. State v. Gertz, 21 Hawaii, 526. The repeated statement of the offense--i.e., the nonsupport of minors--the indictment and sentence, and the averments contained in the formal application of the Governor of Ohio for the requisition, leaves no doubt as to the grounds upon which relator's return is sought.

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The right of the state of Ohio to the relator's return was therefore based upon the unsatisfied judgment of conviction against him which entailed imprisonment. Upon a showing of these facts without more, the issuance of the requisition would have been authorized, and the incident that he was at large physically, instead of being in durance when he forfeited his right to clemency, was a matter with which the Governor of this state need not concern himself."

In the case of Ex Parte Williams (Criminal Court of Appeals of Oklahoma), 136 P. 597, we have a case exactly in point with the

proposition now here before us. In that case Williams was convicted for the crime of grand larceny in the State of Indiana and was sentenced to imprisonment in the penitentiary of Indiana. Before the expiration of the sentence, Williams was paroled and removed from the State of Indiana to the State of Oklahoma. Later, Williams was declared a delinquent and his parole was revoked. The Governor of Indiana presented requisition papers for the said Williams to the Governor of Oklahoma, which were honored by the Governor. The case came before the Criminal Court of Appeals of Oklahoma by petition for writ of habeas corpus. In denying the petition, the Court said:

"When this matter was presented to the Governor of Oklahoma, he properly referred it to the Attorney General for legal advice. The Attorney General advised the Governor that, to be a fugitive from justice under the act of Congress, it is not necessary that the person charged with having left the state in which the crime was alleged to have been committed did so for the purpose of avoiding a prosecution anticipated or begun, but simply that, having within a state committed a crime against the laws, leaves such state, and when he is sought to be subjected to its criminal process to answer for his offense, he is found within the territory of another state. In support of this proposition, the Attorney General cited the following authorities: Ex parte Dickson, 4 Ind. T. 481, 69 S.W. 943; Op. Gov. Fairfield (Me.) 24 Am. Jur. 226; State v. Richter, 37 Minn. 436, 35 N.W. 9; In re Voorhees, 32 N.J. Law, 141; People v. Pinkerton, 17 Hun (N.Y.) 199; Johnson v. Ammons (Ohio) 7 Am. Law Rec. 662; Hibler v. State, 43 Tex. 197; Roberts v. Reilly, 116 U.S. 80, 6 Sup. Ct. 291, 29 L. Ed. 544; In re Bruce (C.C.) 132 Fed. 390; In Re Block (D.C.) 87 Fed. 981; in re White, 55 Fed. 54, 5 C.C.A.29; Ex parte Brown (D.C.) 28 Fed. 653.

We are of the opinion that the advice of the Attorney General to the Governor states the law correctly. In further support of this proposition, we desire to cite the case of Drinkall v. Spiegell, 68 Conn. 441, 36 Atl. 830, 36 L.R.A. 486. In that case the Supreme Court of Connecticut held that a prisoner who violates a parole, and goes into another state, is a fugitive from justice within the provisions of the United States Constitution and laws, and that such person is subject to extradition.

There is but one question in this case, and that is the legality of the revocation of the parole

of petitioner; but this is a question for the courts of Indiana, for they alone have the right to construe their Constitution and laws."

In view of the foregoing, it is the opinion of this department that a person convicted of a crime in one state and paroled to a person in the State of Missouri and whose parole is later revoked, is a fugitive from justice within the meaning of the extradition laws.

Very truly yours,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General

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