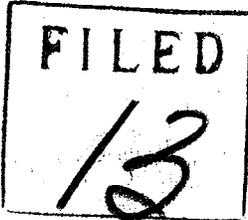


EXTRADITIONS: A finding by a juvenile court that a person under seventeen years of age is a juvenile delinquent is not the basis for extradition and such person cannot be extradited on the basis of the delinquency charge.



March 5, 1953

Hon. Donald W. Bunker
Executive Secretary
Board of Probation and Parole
Jefferson City, Missouri

Dear Mr. Bunker:

We have your recent letter in which you request an opinion of this department. Your letter reads as follows:

"I have been requested by a circuit judge to ask you whether, in your opinion, a juvenile delinquent may be extradited from another state.

"The case in point is that of Russell York, Missouri Probationer #4211J-10, who was charged, and pleaded guilty to delinquency under the Juvenile Law. The offense was Larceny of a Motor Vehicle. On January 29, 1951, he was sentenced to the Missouri Training School for Boys at Boonville for an indeterminate period. He was fifteen years of age at the time. Parole was granted from the sentence by the court, who permitted him to return to his home in Peoria, Illinois, in the custody of his parents, Mr. and Mrs. Forrest York.

"The Board of Probation and Parole accepted supervision from the court for transfer to the supervision of the Illinois parole authorities. He has been under the supervision of the State of Illinois since January 29, 1951.

"Russell York recently committed a new offense in the State of Illinois. He is now being held in Peoria on a new charge. The Illinois authorities have recommended and requested revocation of the parole of this juvenile delinquent. The question is whether this juvenile delinquent can be extradited from Illinois and returned to the court for the execution of the sentence to the Boys Training School, Boonville, Missouri."

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Your question is generally whether a juvenile delinquent can be extradited from another State and specifically whether Russell York the person mentioned in your letter, a juvenile delinquent, can be extradited from the State of Illinois to the State of Missouri.

Sections 211.010 RSMo 1949 to 211.300 RSMo 1949, pertain to neglected and delinquent children in counties of the first and second classes. The words "delinquent child" are defined both in Section 211.010 RSMo 1949, applicable to first and second class counties and the City of St. Louis and Section 211.310, RSMo 1949, applicable to third and fourth class counties. The definitions in the two said sections are substantially the same and for the purposes of your inquiry the definition in either section is applicable. We, therefore, quote paragraph three of Section 211.310 RSMo 1949 as follows:

"The words 'delinquent child' shall include any child under the age of seventeen years who violates any law of this state, or any city or village ordinance, or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons, or who is growing up in idleness or crime, or who knowingly visits or enters a house of ill repute or any place where any gaming device is operated; or any saloon or dramshop where intoxicating liquors are sold; or who is either habitually truant from any day school or who, while in attendance at any school, is incorrigible, vicious or immoral. Any disposition of any delinquent child under sections 211.310 to 211.510, or any evidence given in such cases shall not in any civil, criminal or other cause or proceeding whatever in any court be lawful or proper evidence against such child for any purpose whatever, except in subsequent cases under sections 211.310 to 211.510."

We call attention to the fact that said section lists numerous and varied acts or courses of conduct which may constitute a basis for a declaration by a Juvenile Court that a person under the age of seventeen years is a delinquent child and among those acts or courses of conduct is listed the violation of any law of this State.

Russell York a boy under seventeen years of age mentioned in your letter was charged with and pleaded guilty to delinquency under the Juvenile Law. The offense seems to have been Larceny of a Motor Vehicle, which offense constituted ground for the court to designate him as a delinquent child and the court accordingly sentenced him to the Missouri Training School for Boys at Boonville for an indefinite period. The court then according to your letter paroled York who was fifteen years old at the time and permitted him to return to his home in Illinois in the custody of his parents. York has since committed an offense in Illinois and the Illinois authorities suggest

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that his Missouri parole be revoked and you desire to know whether York who has been convicted of nothing but juvenile delinquency can be extradited.

In order to answer this specific question we must consider the question as to whether or not an affidavit or an indictment charging a person under seventeen years of age with the commission of a crime, which charge has been adjudicated and disposed of by a finding of the Juvenile Court to the effect that the person charged is guilty of juvenile delinquency constitutes such a charge by affidavit or indictment of the commission of a crime as comes within the provisions of the Extradition Law of the United States, as set forth in Title 18, Section 3182 U.S.C.A., and the further question as to whether a person who has been peroled by a Missouri Court to the custody of persons in another State, and is in that other State in the custody prescribed by the said Missouri Court is a fugitive from justice within the meaning of the last hereinabove cited statute.

Said Title 18, Section 3182 U.S.C.A., is quoted as follows:

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic, by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged."

Answering the last above mentioned question first, we comment that it is apparent that under the above quoted Federal Statute that in order to be subject to extradition the person sought to be extradited must be a fugitive from justice. In this connection we quote as follows from the opinion of the court in Ex parte Tanner, 128 F. 2d 338 1.c. 341:

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* * * * * It has been held that a convict whose parole has been revoked is a fugitive from justice within the meaning of this statute, even though he entered the asylum state with the consent of the paroling authorities, and is subject to return to the demanding state by extradition proceedings. In re McBride, 101 Cal. App. 251, 281 P. 651; for cases from other jurisdictions see notes in 78 A.L.R. 419, 8 A.L.R. 903."

Accordingly we deduce from these holdings the conclusion that the mere fact that Russell York was paroled to his parents in Illinois and went to Illinois pursuant to the provisions of the parole order does not keep him from being extraditable as a fugitive from justice upon the revocation of the parole by the Missouri Court.

We must now consider the question whether an affidavit charging a boy under seventeen years of age with the commission of a crime in Missouri is the basis for extradition from another state, when as a matter of fact he was not prosecuted pursuant to that charge but was pursuant to the lawful exercise of the discretion vested in the Judge of the Juvenile Court proceeded against as a delinquent child and held to be such by said court.

It is obvious that the purpose of the extradition under consideration is to accomplish the return of the juvenile delinquent to Missouri in order that he may be given the benefit of the corrective measures provided in this state for juvenile delinquents in accordance with the court's sentence and that he is not wanted in Missouri for the purpose of prosecuting him for the crime of larceny with which he was charged.

While the charge that the juvenile delinquent committed a crime may have been a contributing factor or in fact the only factor in his conviction of juvenile delinquency he was nevertheless not convicted of crime and the criminal charge against him was disposed of by the court through the court's exercise of the discretion vested in it by law pursuant to which discretion the court instead of trying him for a crime tried him and convicted him on the charge of juvenile delinquency and held him to be a juvenile delinquent. The criminal charge was thereby disposed of and there is no charge of crime now pending against said juvenile delinquent in the State of Missouri. In this connection we quote as follows from State v. Rutledge, 13 SW 2d 1061, 1.c. 1066 as follows:

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"When a delinquent child is brought before a juvenile court charged with the violation of a criminal statute, the judge of that court must determine in the first instance whether such child shall be proceeded against as a delinquent, or prosecuted under the criminal law. * * * * *"

A person convicted of juvenile delinquency has not been convicted of a crime. In this connection we again quote as follows from State vs. Rutledge, supra, l. c. 1064:

* * * * * A proceeding under the Act, the aim of which, as in this case, is the exertion of the state's power, *parens patriae*, for the reformation of a child and not for his punishment under the criminal law, is not a criminal case, * * * * *"

CONCLUSION

We are accordingly of the opinion that, since the only criminal charge against Russell York has been disposed of by a finding that he is a juvenile delinquent, and, since a conviction of juvenile delinquency does not amount to a conviction of a crime, he cannot be extradited from another state, and we are further of the opinion that no juvenile delinquent can be extradited on the basis alone of his conviction of juvenile delinquency even though that conviction resulted from a charge of violation of a criminal statute.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Samuel M. Watson.

Yours very truly

JOHN M. DALTON
ATTORNEY GENERAL

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