

Thursday, January 24, 2008

### **International extraditions: To be fought tooth and nail.**

Â Bill of Rights.Â (From the public domain.)Â International extradition defenseÂ seems to be an area that most criminal defense lawyers have either not handled at all, or very little. I learned this after being hired for such a case a few months ago, and learning that one of my favorite and most experienced local criminal defense lawyers -- whom I asked about appearing forÂ my client in the event of a scheduling conflict for aÂ bond proceeding -- told me he had not done much in the area. Â My client was arrested in Northern Virginia at the request of his native country, which had him tried, convicted and sentenced in absentia. I arrived at the courthouse for my client's first substantive hearing, where his court-appointed lawyer whom I was replacing did not see why my client would not just consent to be extradited, seeing that he already had an in absentia conviction abroad. Â Although criminal defense lawyers might routinely advise clients to waive a challenge to be extradited to another state within the United States -- where the defenses against extradition are often limited to whether the detainee is the one being sought, and whether the proceedings in the other state are legitimate -- they should not do so with international extradition defense, where plenty more defenses often are available. Â In our instance, we were faced with fighting for a bondÂ (the Bail Reform Act does not apply to extradition cases, and bail was denied to our client, in part because the judge determined that our client was a particularly high flight risk, seeing that he already had been convicted and sentenced to prison in absentia). We also were faced withÂ convincing the court to delay the extradition hearing long enough for a lawyer in our client's native country to seek a court ruling there to correct calculation errors in the overseas court's records, so as to prove that our client was arrested too late after his overseas sentencing to be eligible for extradition. We were in the United States District Court for the Eastern District of Virginia, which has a well-earned nickname of "The Rocket Docket", where the right to a speedy trial often works against criminal defendants for moving along with such breakneck speed as to deprive defendants of sufficient time to prepare a defense (courts sometimes counter that the right to a speedy trial is not just a defendant's right, but the public's right, as well). Once bond was denied, we also needed to convince our client that it was better to stay in pre-trial detention while waiting for an extradition hearing, than to speed things up before we could obtain a favorable ruling abroad as to his in absentia conviction. Â International extradition is not an area to delve into without coming completely up to speed with the subject. I turned for advice to a lawyer in a neighboring state who has substantial experience with such cases, and was blessed by working with an excellent federal public defender lawyer representing my client's co-defendant in this extradition matter who was tried and sentenced in absentia along with my client for the same alleged offense. Â Among the reasons for fighting international extradition are these: By avoiding extradition, a person may obtain liberty more quickly and might avoid the harsher prison conditions faced in plenty of countries worldwide. Being extradited can tear the defendant away from his or her family and livelihood in the United States. If the defendant is not a United States citizen, the doors back to the United States may be closed or very difficult to pry open on attempting to return; more rights often are afforded immigrants on United States soil against deportation than the rights afforded people trying to enter the United States who are considered by authorities as excludable. Â One of our biggest strategic victories was convincing the judge (with the consent of the prosecutor, which often helps particularlyÂ in this courthouse)Â to hold a bond hearing far enough in advance for us to file persuasive arguments with the benefit of more information about the challenge concerning the court records in our client's overseas conviction. Another victory was convincing the judge (with the consent of the prosecutor) to set the matter in forÂ a status hearing several weeks later, rather than setting the matter in for an extradition hearing yet. Â I walked into the status hearing ready to do my best to convince the judge to set another status hearing in a month or more, or else an extradition hearing several months down the line, while my client's overseas lawyer sought relief from an initial denial to correct the record concerning the date when the statute of limitations ran for my client to have to serve any prison time at all on his overseas conviction. Instead, the prosecutor told me he was dismissing the case. Happily stunned, I asked if he was joking me, but this prosecutor seems to be cut more from the cloth of a decades-long prosecutor not swayed much or at all by political passions, and whom I never saw crack a joke before. Wonderfully, he and the State Department lawyer on the case applied themselves and did their homework to conclude that the case needed to be dismissed, because they determined the State Department would not extradite our client where, as here, they learned that my client's native country would decline to give him a retrial where he had been convicted and sentenced in absentia. Rather than our needing to make similar arguments at an extradition hearing, the prosecution beat us to the punch, and kept in place the above-described favorable State Department policy.Â I am more than overjoyed at this result, and only regret that my client needed to spend even one day in jailÂ and even one dollar on this extradition matter. Â Many more issues are involved with this and other extradition matters (extradition can also involve efforts against extradition back to the United States and against extradition from one overseas country to another), includingÂ challenging the existence, legitimacy, and interpretation of extradition treaties; appealing to public policy interests of United States government officials; and showing courts that even the most basic of procedural protections will be denied to the extradition defendant, whether or not the extradition defendant has already been convicted abroad, versus whether an overseas trial date is pending. Jon

Katz.

Posted by Jon Katz in Criminal Defense at 00:00