IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Respondent-Appellee,

v.

KAZUYOSHI MIURA,
Petitioner-Appellant.

SUPREME COURT NO. 2008-SCC-0028-CRM
SUPERIOR COURT NO. 08-0030

Cite as: 2010 MP 12

Decided July 22, 2010

Jeffrey L. Warfield, Sr., Assistant Attorney General, Commonwealth Attorney General's Office, for Petitioner-Appellee
Bruce Berline, Esq., Mark B. Hanson, Esq., and William Fitzgerald, Esq., Saipan, Northern Mariana Islands, for Respondent-Appellant

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; EDWARD MANIBUSAN, Justice Pro Tem.

PER CURIAM:

¶ 1 Defendant Kazuyoshi Miura ("Miura") appeals the trial court's order denying his petition for a writ of habeas corpus and ordering his extradition to the State of California on charges of murder and conspiracy to commit murder. Miura argues that the trial court erred because under California law he cannot stand charged with either crime as California's double jeopardy law bars both charges. We granted a stay of the extradition order pending this appeal. For the reasons set forth below, we find that the trial court did not err in denying Miura's petition because the United States Constitution, applicable to the Commonwealth through the Covenant, only allows Commonwealth courts to consider the sufficiency of another state's extradition request – not a petitioner's substantive legal claims why he or she is being unlawfully charged in the state seeking extradition. Accordingly, we AFFIRM the trial court's order denying Miura's petition for a writ of habeas corpus.

I

¶ 2 In November 1981, while Miura and his wife Kazumi vacationed in Los Angeles, California, an unknown assailant attacked both Miura and Kazumi. The assailant shot Miura in his right leg and his wife in the head. Miura's wife later died as a result of her injuries. Prosecutors in Japan subsequently charged Miura with murder and conspiracy to commit murder for the death of his wife. In 1988, California followed suit, charging Miura with the same offenses. In 1994, the Japanese trial court convicted Miura and sentenced him to life imprisonment. The Supreme Court of Japan later overturned Miura's conviction and entered a judgment of acquittal.

¶ 3 In 2008, Miura came to Saipan and Commonwealth law enforcement officials immediately detained him pursuant to an outstanding felony arrest warrant issued in California in 1988. Two days later, California prosecutors obtained an amended warrant for Miura's arrest. Shortly thereafter, California Governor Arnold Schwarzenegger signed a formal requisition requesting Miura's extradition to California to face murder and conspiracy to commit murder charges. In response, Commonwealth Governor Benigno R. Fitial issued a governor's arrest warrant directing Commonwealth law enforcement officials to detain Miura and make him available for extradition.

¶ 4 Miura challenged the legality of the governor's arrest warrant by filing a petition for the writ of habeas corpus in the trial court, arguing that his detention violated his due process rights. He also initiated proceedings in California to quash the 1988 arrest warrant, claiming double jeopardy barred his prosecution in California. On September 12, 2008, the trial court denied Miura's writ petition and ordered his extradition to California. On the same day, Miura filed an emergency motion with this Court, requesting a stay of the extradition order pending this appeal. On September 15, 2008, this Court granted Miura's motion and scheduled an expedited briefing and hearing schedule. On September 23, 2008, following oral arguments, we issued an order affirming the trial court's denial of Miura's petition, and at the same time, lifted the stay of his extradition.[1] This opinion supplements our September 23, 2008 order.

II

¶ 5 This Court exercises jurisdiction over denials of writs of habeas corpus pursuant to Supreme Court Rule 22 which reads: [2]

> An application for a writ of habeas corpus must be made to the Superior Court. If made to this Court, the application must be transferred to the Superior Court. If a Superior Court judge denies an application made or transferred to it, renewal of the application before this Court is not permitted. *The applicant may*, under 6 CMC § 7107, *appeal to this Court from the Superior Court's order denying the application*. (emphasis added)

NMI Sup. Ct. R. 22. We review de novo an appeal from a denial of a writ of habeas corpus. *Prasoprat v. Benov*, 421 F.3d 1009, 1013 (9th Cir. 2005).

III

A. Stay of Extradition Pending Appeal

¶ 6 We first address our grant of Miura's motion for a stay of extradition pending appeal.[3] As a preliminary matter, this Court can issue writs to maintain the status quo of cases pending before

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[1] Miura was subsequently extradited to California.

[2] The Commonwealth Rules of Appellate Procedure applied at the time we issued our order and read: "An application for a writ of habeas corpus shall be made to the Superior Court pursuant to 6 CMC §§ 7101 *et. seq.* If the Superior Court denies the application then the applicant may appeal to this Court pursuant to 6 CMC § 7107." Com. Rule. App. P. 22. The differences in the wording of the rules are inconsequential for our exercise of jurisdiction.

[3] In *Vaughn v. Bank of Guam*, 1 NMI 318, 321-322 (1990), this Court sets forth the standards upon which a motion to stay pending appeal should be granted. Specifically, we held that: "the moving party must show: (1) a combination of probable success on the merits and the possibility of irreparable injury; or (2) that serious questions are raised and the balance of hardships tips sharply in its favor." Arguably a petitioner cannot entirely meet either of these standards because: (1) showing probable success on the merits is difficult in light of the very narrow scope of review available to asylum courts in cases of

us for review. *See Brewster v. Bradley*, 379 S.W.2d 480, 481 (Ky. Ct. App. 1964). In *Brewster*, the court recognized that if it did not grant a stay of extradition then the petitioner's appeal from the trial court's denial of the writ would not have any effect because he would be extradited and outside of the territorial jurisdiction of Kentucky courts. *Id.* Similarly, in *Ex parte Stowell*, 940 S.W.2d 241, 243 (Tx. App. 1997), the court held that "appellant's extradition to another jurisdiction renders his appeal moot in this jurisdiction." In *Commonwealth v. Caffrey*, 508 A.2d 322, 323 (Pa. Super. 1986), the court refused to address the merits of the appellant's argument that the trial court improperly denied his writ of habeas corpus because he was already extradited outside of Pennsylvania. Since the petitioner was no longer in Pennsylvania, the court could not address the merits because "[t]he decree of a court of a state cannot operate extraterritorially." *Id.* In order for a court to consider an appeal from a denial of habeas corpus in an extradition context, "the legality of the extradition must be tested in the asylum state prior to extradition, not afterwards." *Id.* at 324. Since this Court has the power to review orders from the trial court denying habeas corpus and allowing for extradition, we also have the power to stay extradition because as soon as the petitioner leaves the Commonwealth we are unable to grant relief.

¶ 7 Policy reasons also exist to stay extradition. The Supreme Court Rules require judicial authorization before an official may transfer a prisoner whose habeas corpus proceeding is pending review outside of this Court's jurisdiction. Com. Rule. App. P. 23(a).[4] The federal analog to Rule 23 is nearly identical to the pre-revision version of our rule. Fed. Rule App. Proc. 23(a). When a federal and Commonwealth rule are similar, "it is appropriate to consult the interpretation of the counterpart federal rule," even though the interpretations are not binding on this Court. *Commonwealth v. Palacios*, 2003 MP 6 ¶ 8. The purpose of federal Rule 23, and by association

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extradition, but if a court is unable to completely hear an appeal because of extradition, a petitioner will always face irreparable injury; and (2) the scope of review will restrict the ability of petitioners to raise serious questions, but the hardships will arguably always tip sharply in their favor, again because extradition would permanently interrupt their appeal. Therefore, we reject the *Vaughn* test in the context of habeas corpus petitions challenging an extradition.

[4] Our prior Commonwealth Rule of Appellate Procedure 23(a), which was in effect at the time we ordered Miura's extradition, was as follows:

> Pending review by this Court of a decision in a habeas corpus proceeding commenced before the Superior Court for the release of a prisoner, the person having custody of the prisoner may not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

our rule, "is to prevent officials from frustrating an inmate's efforts to obtain habeas corpus relief by physically removing him from the territorial jurisdiction of the court where the petition is pending." *Strachan v. Army Clemency & Parole Bd.*, 151 F.3d 1308, 1313 (10th Cir. Kan. 1998); *see Goodman v. Keohane*, 663 F.2d 1044, 1047 (11th Cir. Fla. 1981); *see also Jago v. United States Dist. Court, etc.*, 570 F.2d 618, 626 (6th Cir. 1978). Thus, in spite of the trial court's authorization for transfer, the transfer of Miura during the pendency of his appeal would frustrate the purpose of Rule 23. While Rule 23 does not require us to automatically grant a stay before a petitioner exhausts the appellate process, it would frustrate the policy embodied in the rule if we failed to grant the stay before we addressed the merits of the appeal.

¶ 8 A stay of extradition pending appeal allows petitioners to exercise their right to attempt to obtain habeas corpus relief. A stay of extradition is proper when it prevents an extradition from denying persons the right of appeal by rendering it moot, and frustrating a petitioner's right to appeal to this Court. Therefore, we granted the motion to stay extradition pending this appeal.

B. The Effect of United States Extradition Law in the Commonwealth

¶ 9 We now addresss interstate extradition as it is defined by the United States Constitution, United States Supreme Court opinions, and how that authority interacts with our own extradition statute. Interstate extradition is based on the Extradition Clause, contained in Article Four, Section Two of the United States Constitution. U.S. Const. art IV, § 2, cl. 2.[5] The Extradition Clause requires states to extradite persons found within their borders who stand charged with a crime in another state or territory. *Id.* The purpose of the Extradition Clause, as noted by the U.S. Supreme Court, is "to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed." *Michigan v. Doran*, 439 U.S. 282, 287 (1978). The Extradition Clause precludes a state from becoming a sanctuary for out-of-state fugitives, thereby preventing the balkanization of the administration of criminal justice among the several states. *Id.*

¶ 10 The Extradition Clause is applicable to the Commonwealth through § 501(a) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801 note, *reprinted in* CMC at B-101, *et seq*. ("Covenant"). The Extradition Clause is not self-executing and is thus implemented by federal

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[5] Article IV, § 2, cl. 2 of the United States Constitution states: "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."

statute. The U.S. Congress effectuated the Extradition Clause through the Extradition Act of 1793, currently codified as 18 U.S.C. § 3182 ("Extradition Act"),[6] and it applies equally to all states, territories, and U.S. possessions. *See Puerto Rico v. Branstad*, 483 U.S. 219, 229 (1987) (finding Extradition Act applicable to Puerto Rico). A federal statute of general applicability to the states and to Guam presumptively applies to the same extent in the Commonwealth if Congress enacted the federal statute prior to January 9, 1978. Covenant § 502(a)(2); *see Sablan v. Tenorio*, 4 NMI 351, 358 n.23 (1996). Thus, the Extradition Clause is applicable to the Commonwealth through the Covenant and the Extradition Act.

¶ 11 Even though the Extradition Act applies to the Commonwealth, states and territories can still enact their own extradition statutes as long as those laws do not contravene federal law. *Innes v. Tobin*, 240 U.S. 127, 134-35 (1916). The rule in *Innes* allowed the Commonwealth and other U.S. jurisdictions to enact extradition statutes. The Commonwealth's statute is based on the Uniform Criminal Extradition Act. 6 CMC §§ 6901-6931; 6 CMC § 6901 cmt. All persons facing extradition from the Commonwealth have the right to challenge extradition in the trial court, and such persons cannot be handed over to the agent of the demanding state prior to appearing before a judge of the Commonwealth trial court and being apprised both of the crime for which they are accused and their rights. 6 CMC § 6911. An individual can challenge extradition by petitioning for a writ of habeas corpus. *Id.* Thus, the United States Constitution, United States Supreme Court precedent, and our extradition statute bind this Court in determining how Miura can challenge California's extradition request.

C. Grounds for Challenging Extradition

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[6] 18 USC § 3182 provides:

> 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 [United States magistrate judge] 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 [United States magistrate judge] 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.

¶ 12 Extradition is intended to be a "summary and mandatory executive proceeding" in which the role and discretion of the reviewing court is strictly limited. *Doran*, 439 U.S. at 288;[7] *see also* 18 U.S.C. § 3182; 6 CMC §§ 6916-6917. As such, the issuance and execution of a governor's arrest warrant is "prima facie evidence that the constitutional and statutory requirements have been met." *Doran*, 439 U.S. at 289. Once the governor authorizes extradition via a governor's warrant,

> a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive.

Id.

¶ 13 In *California v. Superior Court of California*, 482 U.S. 400 (1987), the Court applied the *Doran* rule to an extradition request by the Governor of Louisiana that was successfully challenged in the California Supreme Court. The case arose out of an extended interstate child-custody dispute between divorced parents. While child custody proceedings were pending in California, the mother filed a criminal complaint in Louisiana alleging that the father kidnapped the children. The father had not kidnapped his children because a California court granted him custody and he merely took the children pursuant to the court's order. *Id.* Nevertheless, the Governor of Louisiana filed an extradition request with the Governor of California. In response to the California Governor issuing an arrest warrant, the father filed a writ of habeas corpus, which the California Superior Court granted on the ground that the Louisiana process insufficiently supported criminal charges. The California Supreme Court agreed with the trial court on the basis that the father did not stand substantially charged with a crime. *Id.* at 404-405. The U.S. Supreme Court granted certiorari.

¶ 14 Before the Court, the father argued that both the California Supreme Court's holdings and federal legislation indicated it was impossible for Louisiana to charge him with kidnapping because he had legal custody of the children, and as the charge was thus not substantial, California could not extradite him. *Id.* at 410. The father relied on *Roberts v. Reilly*, 116 U.S. 80 (1885), which required that a person must be substantially charged with a crime before they can be extradited, and that if a charge could not withstand something similar to a motion to dismiss in the demanding state, the asylum state was not required to extradite. *Id.* The Court disagreed, and

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[7] In *Doran*, the Michigan Supreme Court granted a prisoner's petition for a writ of habeas corpus and released him because the charging documents failed to show facts supporting probable cause. *Id.* The U.S. Supreme Court reversed because "once the governor of the asylum state has acted on a requisition for

stated that "our cases make clear that no such inquiry is permitted." *Id.* at 411. It cited to *Pierce v. Creecy*, 210 U.S. 387 (1908), for the rule that an asylum state cannot consider whether the demanding state's indictment is good or bad, but only that the indictment unmistakably lists every element of the crime charged. *Id.* The Court concluded by reasoning that the validity of the Louisiana charge could not be considered by the California courts, even if it appears meritless, as "it is for the Louisiana courts to do justice in this case, not the California courts: 'surrender is not to be interfered with by the summary process of habeas corpus upon speculation as to what ought to be the result of a trial in the place where the Constitution provides for its taking place.'" *Id.* at 412 (citing *Drew v. Thaw*, 235 U.S. 432, 440 (1914)).

¶ 15 Similar to the father in *California*, Miura's primary contention on appeal is that California failed to substantially charge him with a crime, and thus he cannot be legally extradited.[8] Miura argues that because the Supreme Court of Japan already reversed his conviction of murder and conspiracy to commit murder, California prosecutors violated California double jeopardy statutes in issuing the arrest warrant. Miura also claims that because a California court is currently considering the legitimacy of his double jeopardy claim he cannot stand substantially charged of a crime in California until that issue is resolved.

¶ 16 Commonwealth law requires that "the Governor shall have arrested and delivered up to the executive authority of any state any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in the Commonwealth." 6 CMC § 6902. "[T]he Governor may make no inquiry into the guilt or innocence of the accused as to the crime of which he or she is charged, nor may any such inquiry be made in any proceeding after presentation to the Governor of the demand for extradition." 6 CMC § 6921.[9] Additionally, 6 CMC § 6903[10]

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extradition based on the demanding state's judicial determination that probable cause existed, no further judicial inquiry may be had on that issue in the asylum state." *Id.* at 290.

[8] On appeal, Miura does not contest any of the other three factors sets forth in *Doran*.

[9] 6 CMC § 6921 provides:

> Except as that may be involved in identifying the person held as the person charged with the crime, the Governor may make no inquiry into the guilt or innocence of the accused as to the crime of which he or she is charged, nor may any such inquiry be made in any proceeding after presentation to the Governor of the demand for extradition accompanied by a charge of crime in legal form as provided in this chapter.

[10] 6 CMC § 6903 provides:

> (a) Except in cases arising under 6 CMC § 6907, no demand for the extradition of a person charged with or convicted of crime in a state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time

mandates that the demanding state must include a copy of any pertinent documents, such as the indictment, information, affidavit, or judgment, and that these documents must substantially charge the individual with a crime, and 6 CMC § 6908[11] states the procedures the Governor must follow if the Governor decides to comply with the extradition request.

¶ 17 As discussed in *California*, 482 U.S. at 411, the asylum state may make no inquiry into the validity of the charges; it may only determine if the person is charged with a crime and if the extradition papers are in order. As reaffirmed by *California*, the Court in *Pierce* made clear that if the indictment lists every element of the crime charged then the asylum state's inquiry into the validity of the extradition request ends. *Id.* at 411. Similar to the Constitutional requirements, our statute provides that the Governor cannot inquire into the guilt or innocence of the accused, nor can a subsequent proceeding make such an inquiry. 6 CMC § 6921. All that our statute requires is that the extradition request includes all pertinent papers and substantially charges the individual with a crime. 6 CMC § 6908. Miura did not dispute the adequacy of the extradition order, or claim that the Governor improperly effectuated his arrest, but instead he attempted to challenge the validity of the charges against him. This argument is insufficient. While 6 CMC § 6908 states that an individual must be substantially charged with a crime, *California* makes clear that substantially charged means that every element of the offense is listed by the demanding state.

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of the commission of the alleged crime and that thereafter he or she fled from that state. The demand shall be accompanied by:

(1) A copy of the indictment found;

(2) A copy of an information supported by an affidavit filed in the state having jurisdiction of the crime;

(3) A copy of an affidavit made before a magistrate in that state together with a copy of any warrant which was issued thereon; or

(4) A copy of a judgment of conviction or of a sentence imposed in execution thereof together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his or her bail, probation or parole.

(b) The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

[11] 6 CMC § 6908 provides:

If the Governor decides that a demand for extradition of a person charged with, or convicted of, a crime in a state should be complied with, the Governor shall sign a warrant of arrest, which shall be sealed with the Commonwealth Seal, and be directed to the Attorney General, Director of Public Safety, or other person whom the Governor may think fit to be entrusted with its execution. The warrant must substantially cite the facts necessary to the validity of its issuance.

482 U.S. at 411. Since there is no deficiency with the extradition request from California, we cannot consider the merits of Miura's argument.

IV

¶ 18 For the foregoing reasons, we hold that a stay of an order of extradition pending appeal shall issue when extradition will render an appeal moot and irrevocably frustrate a petitioner's rights. Under the U.S. Supreme Court's interpretation of the Extradition Clause, however, we cannot consider the effect of California's double jeopardy law in determining whether Miura stands substantially charged with a crime. There being no basis to grant the petition for a writ of habeas corpus, the trial court's decision is AFFIRMED.

SO ORDERED this 22nd day of July, 2010.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
EDWARD MANIBUSAN
Justice Pro Tem