

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY 1 1990

ROBERT L. HOECKER
Clerk

DONALD GEE,
Petitioner-Appellant,
v.
TERRY L. CAMPBELL,
Respondent-Appellee.

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No. 89-3270
(D.C. No. 89-3084-S)
(District of Kansas)

ORDER AND JUDGMENT*

Before MCKAY, ANDERSON, and TACHA, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Petitioner brought this action pursuant to 42 U.S.C. § 1983. He alleges that the defendant/sheriff of Leavenworth County, Kansas, acting through his subordinate, violated his "extradition rights." The district court granted summary judgment dismissing

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

petitioner's case for failure to establish that any federally recognized rights had been violated.

Shortly before petitioner's mandatory release from federal custody in the United States Penitentiary, Leavenworth, Kansas, the respondent was informed that the State of Wyoming had placed a detainer on the petitioner. Upon his mandatory release, federal prison officials released him directly into the custody of the respondent's employees who incarcerated him in the Leavenworth County, Kansas jail. Thereafter a warrant was issued directing the respondent to hold petitioner pending receipt of a requisition for his extradition to the State of Wyoming. Basically, petitioner complains that the acts of the respondent in taking petitioner from the custody of federal officials into his own custody without extradition proceedings violated his federal rights.

The only authority on which petitioner relies is the Uniform Criminal Extradition Act adopted in Kansas as Kan. Stat. Ann. § 22-2701, et seq. That act does not apply to transfers between the United States and the various states. We have held:

Either the federal or a state government may voluntarily surrender its prisoner to the other without the consent of the prisoner. Whether jurisdiction and custody of a prisoner shall be retained or surrendered is a matter of comity and is to be determined by the sovereign having custody.

Hayward v. Looney, 246 F.2d 56, 57 (10th Cir. 1957).

We agree with the trial court that petitioner has failed to establish that any right cognizable under section 1983 has been

violated. Appellant's motion for leave to proceed without prepayment of fees is granted. For the reasons set forth in the trial court's order of September 13, 1989, the dismissal of this action is AFFIRMED.

The mandate shall issue forthwith.

Entered for the Court

Monroe G. McKay
Circuit Judge