



State of North Carolina

Department of Justice
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ATTORNEY GENERAL

Special Prosecutions Section
(919) 716-6500

September 19, 1997

Ms. Deborah Koenig
Legal Advisor
Cumberland County Sheriff's Department
131 Dick Street
Fayetteville, North Carolina 28301-5793

Re: Pre-Signed Waivers of Extradition

Dear Ms. Koenig:

In your letter of July 15, 1997, you have requested on behalf of the Sheriff of Cumberland County an opinion of the North Carolina Attorney General regarding the validity of advance agreements to return, or pre-signed waivers of extradition, under the Uniform Criminal Extradition Act (N.C.G.S. §§ 15A-721 through 750). Specifically, you inquire whether a waiver of extradition executed by a probationer/parolee as a condition precedent to his release from another state, in which the probationer/parolee waives any right to extradition proceedings if found in any other state without permission during the term of his probation/parole, constitutes a valid waiver of the statutory extradition procedures under the Uniform Criminal Extradition Act. For reasons relating to both the Uniform Criminal Extradition Act and the Interstate Compact for the Supervision of Parolees and Probationers, such pre-signed waivers of extradition are fully valid and may be given effect in accordance with their terms.

Interstate Compact for the Supervision of Parolees and Probationers

The Interstate Compact for the Supervision of Parolees and Probationers provides the sole statutory authority for regulating the transfer of adult parole and probationer supervision across state boundaries. This interstate compact provides that

duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to



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obtain extradition of fugitives from justice are expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

N.C.G.S. § 148-65.1(a)(3).

No transfer shall occur under the Interstate Compact for the Supervision of Parolees and Probationers without a duly executed waiver of extradition signed by the probationer/parolee. You have attached to your letter one such "Agreement to Return" in which the probationer/parolee waives any right to extradition proceedings in return for the privilege of interstate supervision:

I, [parolee], in consideration of being granted parole by the state of New York and especially being granted the privilege to leave the state of New York to go to North Carolina hereby agree:

1. That I will make my home with [addressee] until a change of residence is duly authorized by the proper authorities of North Carolina;
2. That I will comply with the conditions of parole as fixed by both the states of New York and North Carolina;
3. That I will, when duly instructed by the state of New York return at any time to the state of New York;
4. That I hereby do waive extradition to the state of New York from any jurisdiction in or outside the United States where I may be found and also agree that I will not contest any effort by any jurisdiction to return me to the state of New York;

5. Failure to comply with the above will be deemed to be a violation of the terms and conditions of parole for which I may be returned to the state of New York.

By entering into such an agreement, the individual probationers/parolees have agreed in advance and as a specific condition of their release to waive their right to contest the effort of any state to return them to the sending state. Therefore, no probationer/parolee within this State pursuant to the Interstate Compact for the Supervision of Parolees and Probationers has either a constitutional or statutory right to insist on the utilization of the extradition procedures of the Uniform Criminal Extradition Act.

Even though return of the probationer/parolee to the sending state is effectuated without resort to extradition under the Uniform Criminal Extradition Act, N.C.G.S. § 148.65.1A(a) does provide for a probable cause determination of whether the probationer/parolee has committed acts which would constitute a violation of probation/parole conditions. If the sending state has made such a judicial determination that there is probable cause to believe a probationer/parolee has violated conditions of probation/parole and issued a warrant for arrest for violation of probation/parole, there is no need for a hearing to be held in this State. Duly accredited officers of the sending state may enter this State and retake the probationer/parolee pursuant to N.C.G.S. § 148-65.1(a)(3). If, however, there has been no judicial determination of probable cause by the sending state, and the probationer/parolee has allegedly committed a probation/parole violation in this State, a hearing shall be held in this State pursuant to N.C.G.S. § 148.65.1A(a) to determine whether there is probable cause to believe that the probationer/parolee has violated probation/parole conditions, unless such probable cause determination hearing is waived by the probationer/parolee. Following termination of any such hearing, report is made to the sending state and appropriate action taken pursuant to N.C.G.S. § 148.65.1A(a).

Accordingly, regardless of which state initiates procedures for return of the probationer/parolee for violations of probation/parole, formal extradition procedures are not required to effectuate the return where the probationer/parolee has signed a prior waiver of extradition as a condition of release under the Interstate Compact for the Supervision of Parolees and Probationers. Nor does the Uniform Criminal Extradition Act require formal extradition when a pre-signed waiver of extradition has been executed.

Uniform Criminal Extradition Act

The Uniform Criminal Extradition Act creates specific executive and judicial procedures relating to the extradition of fugitives both to and from this State. The uniform act provides for the issuance and execution of a Governor's warrant of arrest, N.C.G.S. §§ 15A-727 and 728, and further provides that no person arrested under a Governor's warrant may be released to the authorities of the demanding state unless he is first afforded a hearing and an opportunity to apply

for a writ of habeas corpus. N.C.G.S. § 15A-730. However, the uniform act also provides that a fugitive may waive any right to extradition proceedings by executing a written waiver before a judge or clerk of court and specifically states that "nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state." N.C.G.S. § 15A-746.

No North Carolina appellate court has directly addressed the validity of pre-signed waivers of extradition under the terms of the Uniform Criminal Extradition Act. It is generally recognized, however, that parole is "an act of grace," and the requirement that a parolee execute a waiver of extradition is a reasonable condition in connection therewith. Forester v. California Adult Authority, 510 F.2d 58, 61 (8th Cir. 1975). The weight of authority favors the recognition, validity, and enforcement of pre-signed waivers of extradition as a condition of probation/parole. See, e.g., Pierson v. Grant, 527 F.2d 161 (8th Cir. 1975); Cook v. Kern, 330 F.2d 1003 (5th Cir. 1964); U.S. ex rel. Simmons on Behalf of Gray v. Lohman, 228 F.2d 824 (7th Cir. 1955).

In Pierson v. Grant, 527 F.2d 161 (8th Cir. 1975), the court addressed the identical issue at hand: the validity and enforcement of a pre-signed waiver of extradition under the Uniform Criminal Extradition Act. The court analyzed the issue and held as follows:

Appellant argues that in order for a waiver of extradition to be valid there must be compliance with the procedures set forth in Section 25-A of the UCEA [Uniform Criminal Extradition Act]. That section provides that a person may waive the extradition procedures provided for in the UCEA if such waiver is made in the presence of a judge and if the judge has informed the person of his rights under the Act. Appellant contends that, absent other statutory provisions on waiver, this section provides the exclusive method of waiver; and thus, since there was admittedly no compliance with the UCEA procedures, the waiver was invalid as a matter of law.

However, Section 25-A contains the following proviso:

[P]rovided, however, that nothing in this Section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit

the powers, rights or duties of the officers of the
demanding state or of this state.

Advance waivers of extradition in circumstances similar to those of this case have been upheld in a number of cases. [Citations omitted.] We find no basis for concluding that a pre-release waiver of extradition executed as a condition of parole must conform to a procedure which by its own terms is non-exclusive.

Id. at 164 (original emphasis). The identical language of the Uniform Criminal Extradition Act relied upon by the court in its holding is contained in N.C.G.S. § 15A-746.

Furthermore, any assertion by a probationer/parolee of the deprivation of a constitutional right if enforcement is given to pre-signed waivers would be without merit. In Cook v. Kern, 330 F.2d 1003 (5th Cir. 1964), a parolee sought the issuance of a writ of habeas corpus, contending that by honoring a pre-signed waiver of extradition the state of Texas would deprive him of his fundamental constitutional rights. In affirming the denial of the writ, the appellate court held:

Whatever the benefits appellant might have enjoyed under the Texas Extradition Statute, he has not been deprived of a federally protected right; therefore, the writ was properly denied. [Citations omitted.] Moreover, even assuming that a constitutional right were involved, appellant's parole agreement constitutes a sufficient waiver. In United States ex rel. Simmons on Behalf of Gray v. Lohman, [228 F.2d 824 (7th Cir. 1955)], the Court of Appeals said:

“ . . . [h]aving entered into such [parole] agreement, it is not discernible how or in what manner his constitutional rights are violated when it is sought, upon a violation, to obtain his return. Assuming, however, contrary to what we think, that any constitutional right is involved, it is waived by the agreement which the parolee makes with the State.”
228 F.2d at 826.

Id. at 1004 (emphasis added).

The leading legal entity with respect to extradition, The National Association of Extradition Officials, addressed this issue in May, 1986. By Resolution #36, the Association recognized that the Uniform Criminal Extradition Act should be construed liberally so as to

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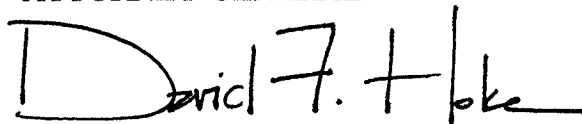
effectuate its purpose of making uniform the laws of those states which have adopted it, and stated that "pre-signed waivers of extradition are valid and should be recognized" and that states should uniformly "enforce such pre-signed waivers of extradition." At least 29 states have enacted statutes, Attorney General's opinions, or policies which provide that pre-signed waivers of extradition are valid and enforceable.

Based upon review of the provisions of the Uniform Criminal Extradition Act and the Interstate Compact for the Supervision of Parolees and Probationers, and the reasoning and weight of the precedent cited above, pre-signed waivers of extradition executed as a condition of probation/parole in another state are valid and effective under the Uniform Criminal Extradition Act, and specifically under N.C.G.S. § 15A-746, to waive any and all rights to statutory extradition proceedings otherwise provided by this State, and may be given effect in accordance with their terms. Thus, formal extradition proceedings are not necessary in order to return probation/parole violators who have signed waivers of extradition as a condition of their release. Once the request of the demanding jurisdiction is made and the probationer/parolee has been arrested, the arresting law enforcement agency should (1) make prompt inquiry of the demanding jurisdiction to determine whether a waiver was signed; and (2) obtain a certified copy of the pre-signed waiver, properly establishing both identity of the probationer/parolee and authority of the officer of the demanding jurisdiction. Upon receipt of this information, the law enforcement agency should make the fugitive available to the other state.

We trust this provides clarification for you on the validity of pre-signed waivers of extradition in this State.

Sincerely,

MICHAEL F. EASLEY
ATTORNEY GENERAL

A handwritten signature in black ink that reads "David F. Hoke". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

David F. Hoke
Assistant Attorney General

A handwritten signature in black ink that reads "Connie R. Eason". The signature is written in a cursive style with a large initial "C" and a long horizontal stroke at the end.

Connie R. Eason
Extradition Secretary