

COURT OF APPEALS OF MARYLAND

State ex rel. Zack v. Kriss, 195 Md. 559

74 A.2d 25 (1950) · No. No. 5, October Term, 1950 (Adv.) · Decided October 5, 2001

SUMMARY

The Maryland Court of Appeals reviewed an appeal from an order remanding Joseph Anthony Zack in an extradition habeas corpus proceeding. The court held that the appeal was procedurally defective, that the Attorney General could delegate the extradition investigation to a Special Assistant Attorney General, and that conflicting evidence did not clearly and satisfactorily establish that Zack was absent from Pennsylvania when the alleged crimes occurred; the appeal was dismissed.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Collins, J.; Marbury, C.J.; Delaplaine, J.; Grason, J.; Henderson, J.; Markell, J.
JURISDICTION	Maryland
DECIDED	October 5, 2001
DOCKET	No. 5, October Term, 1950 (Adv.)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from an order of the Supreme Bench of Baltimore remanding Zack to the custody of the Baltimore police authorities after a habeas corpus hearing concerning his extradition to Pennsylvania.
STANDARD OF REVIEW	On habeas corpus review of an extradition warrant, the accused must establish clearly and satisfactorily, beyond a reasonable doubt, that he was outside the demanding state when the alleged crime occurred. Courts do not resolve an alibi where the evidence is merely conflicting.
PRECEDENTIAL VALUE	Published precedential opinion of the Court of Appeals of Maryland.
PARTIES	Joseph Anthony Zack v. Captain Henry J. Kriss, Baltimore Police Department

TOPICS

- habeas corpus
- criminal procedure
- appellate procedure
- evidence
- standard of review

PRACTICE AREAS

criminal procedure

habeas corpus

interstate extradition

appellate procedure

QUESTIONS PRESENTED

1. Whether the appeal was properly before the Court of Appeals when Zack appealed directly from the habeas corpus remand order instead of applying for leave to appeal as required by statute.
2. Whether a Special Assistant Attorney General could conduct the extradition investigation and report to the Governor under Maryland law.
3. Whether Zack's conflicting alibi evidence clearly and satisfactorily established beyond a reasonable doubt that he was not in Pennsylvania when the charged burglaries occurred, thereby overcoming the presumption that he was a fugitive from justice.

HOLDINGS

1. Although Zack did not follow the statutory procedure requiring an application for leave to appeal, the court addressed the procedural issue because the State elected not to raise the defect and the court considered it in the interest of justice; the appeal was ultimately dismissed.
2. A Special Assistant Attorney General may conduct the investigation and report to the Governor because Maryland law authorizes the Attorney General to assign duties required of him by law to assistants and special assistants, subject to his direction and control.
3. Zack did not overcome the presumption supporting the governor's extradition warrant because the evidence concerning his presence in Pennsylvania was merely conflicting. Habeas corpus was not the proper proceeding to try the question of alibi, and the warrant therefore remained controlling.

KEY QUOTATIONS

"This is not the proper proceeding to try the question of alibi." (195 Md. at 567)

"It has not been clearly and satisfactorily shown beyond a reasonable doubt, to overcome the otherwise controlling presumption, that the appellant is not a fugitive from Pennsylvania." (195 Md. at 568)

"The record here before us discloses 'only a conflict of evidence'." (195 Md. at 568)

FACTUAL BACKGROUND

Pennsylvania charged Zack with six burglaries and requested his extradition from Maryland. Zack presented testimony and affidavits asserting that he was in Maryland on the relevant dates, while Pennsylvania presented testimony placing him in Lebanon, Pennsylvania, including testimony from an alleged accomplice and the accomplice's wife. The evidence conflicted, and the Maryland governor issued a rendition warrant after an investigation by a Special Assistant Attorney General.

PROCEDURAL HISTORY

Pennsylvania sought Zack's extradition on six burglary indictments. After an extradition hearing before a Special Assistant Attorney General, the Governor of Maryland issued a rendition warrant. Zack petitioned for habeas corpus, alleging that he was in Maryland when the Pennsylvania crimes occurred. Judge France heard conflicting evidence and remanded Zack. Zack appealed directly to the Court of Appeals, although Maryland law required an application for leave to appeal; the State declined to raise that technical defect, and the court considered the appeal before dismissing it.

DISPOSITION

dismissed

CASES CITED

- State ex rel. Gildar v. Kriss, 191 Md. 568, 62 A.2d 568 (1949)
- Hyatt v. New York ex rel. Corkran, 188 U.S. 691, 23 S. Ct. 456, 47 L. Ed. 657 (1903)
- Munsey v. Clough, 196 U.S. 364, 25 S. Ct. 282, 49 L. Ed. 515 (1905)
- Illinois ex rel. McNichols v. Pease, 207 U.S. 100, 28 S. Ct. 58, 52 L. Ed. 121 (1907)
- South Carolina v. Bailey, 289 U.S. 412, 53 S. Ct. 667, 77 L. Ed. 1292 (1933)