

**PAUL JOSEPH WRIGHT, PETITIONER, VS. HON. COURT OF APPEALS,
HON. JUDGE JOSE DE LA RAMA, RTC, BRANCH 139, MAKATI, M.M.
AND HON. FRANK DRILON, SECRETARY OF JUSTICE, RESPONDENTS.**

G.R. No. 113213. August 15, 1994

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

A paramount principle of the law of extradition provides that a State may not surrender any individual for any offense not included in a treaty of extradition. This principle arises from the reality of extradition as a derogation of sovereignty. Extradition is an intrusion into the territorial integrity of the host State and a delimitation of the sovereign power of the State within its own territory.[1] The act of extraditing amounts to a “delivery by the State of a person accused or convicted of a crime, to another State within whose territorial jurisdiction, actual or constructive, it was committed and which asks for his surrender with a view to execute justice.”[2] As it is an act of “surrender” of an individual found in a sovereign State to another State which demands his surrender[3], an act of extradition, even with a treaty rendered executory upon ratification by appropriate authorities, does not impose an obligation to extradite on the requested State until the latter has made its own determination of the validity of the requesting State’s demand, in accordance with the requested State’s own interests.

The principles of international law recognize no right of extradition apart from that arising from treaty.[4] Pursuant to these principles, States enter into treaties of extradition principally for the purpose of bringing fugitives of justice within the ambit of their laws, under conventions recognizing the right of nations to mutually agree to surrender individuals within their jurisdiction and control, and for the purpose of enforcing their respective municipal laws. Since punishment of fugitive criminals is dependent mainly on the willingness of host State to apprehend them and revert them to the State where their offenses were committed,[5] jurisdiction over such fugitives and subsequent enforcement of penal laws can be effectively accomplished only by agreement between States through treaties of extradition.

Desiring to make more effective cooperation between Australia and the Government of the Philippines in the suppression of crime,[6] the two countries entered into a Treaty of Extradition on the 7th of March 1988. The said treaty was ratified in accordance with the provisions of Section 21, Article VII of the 1987 Constitution in a Resolution adopted by the Senate on September 10, 1990 and became effective thirty (30) days after both States notified each other in writing that the respective requirements for the entry into force of the Treaty have been complied with.[7]

The Treaty adopts a “non-list, double criminality approach” which provides for broader coverage of extraditable offenses between the two countries and (which) embraces crimes punishable by imprisonment for at least one (1) year. Additionally, the Treaty allows extradition for crimes committed prior to the treaty’s date of effectivity, provided that these crimes were in the statute books of the requesting State at the time of their commission.

Under the Treaty, each contracting State agrees to extradite... “persons...wanted for prosecution of the imposition

or enforcement of a sentence in the Requesting State for an extraditable offense.”[8] A request for extradition requires, if the person is accused of an offense, the furnishing by the requesting State of either a warrant for the arrest or a copy of the warrant of arrest of the person, or, where appropriate, a copy of the relevant charge against the person sought to be extradited.[9]

In defining the extraditable offenses, the Treaty includes all offenses “punishable under the Laws of both Contracting States by imprisonment for a period of at least one (1) year, or by a more severe penalty.”[10] For the purpose of the definition, the Treaty states that:

(a) an offense shall be an extraditable offense whether or not the laws of the Contracting States place the offence within the same category or denominate the offense by the same terminology;

(b) the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account in determining the constituent elements of the offense.[11]

Petitioner, an Australian Citizen, was sought by Australian authorities for indictable crimes in his country. Extradition proceedings were filed before the Regional Trial Court of Makati, which rendered a decision ordering the deportation of petitioner. Said decision was sustained by the Court of Appeals; hence, petitioner came to this Court by way of review on certiorari, to set aside the order of deportation. Petitioner contends that the provision of the Treaty giving retroactive effect to the extradition treaty amounts to an ex post facto law which violates Section 21 of Article VI of the Constitution. He assails the trial court’s decision ordering his extradition, arguing that the evidence adduced in the court below failed to show that he is wanted for prosecution in his country. Capsulized, all the principal issues raised by the petitioner before this Court strike at the validity of the extradition proceedings instituted by the government against him.

The facts, as found by the Court of Appeals,[12] are undisputed:

On March 17, 1993, Assistant Secretary Sime D. Hidalgo of the Department of Foreign Affairs indorsed to the Department of Justice Diplomatic Note No. 080/93 dated February 19, 1993 from the Government of Australia to the Department of Justice through Attorney General Michael Duffy. Said Diplomatic Note was a formal request for the extradition of Petitioner Paul Joseph Wright who is wanted for the following indictable crimes:

1. Wright/Orr Matter - one count of Obtaining Property by Deception contrary to Section 81(1) of the Victorian Crimes Act of 1958; and

2. Wright/Cracker Matter - Thirteen (13) counts of Obtaining Property by Deception contrary to Section 81(1) of the Victorian Crimes Act of 1958; one count of attempting to Obtain Property by Deception contrary to Section 321(m) of Victorian Crimes Act of 1958; and one count of Perjury contrary to Section 314 of Victorian Crimes Act of 1958, which crimes were allegedly committed in the following manner:

The one (1) count of Obtaining Property by Deception contrary to Section 81 (1) of the Victorian Crimes Act of 1958 constitutes in Mr. Wright’s and co-offender, Herbert Lance Orr’s, dishonesty in obtaining \$315,250 from Mulcahy, Mendelson and Round Solicitors (MM7R), secured by a mortgage on the property in Bangholme, Victoria owned by Ruven Nominees Pty. Ltd., a company controlled by a Rodney and a Mitchell, by falsely representing that all the relevant legal documents relating to the mortgage had been signed by Rodney and Janine Mitchell.

The thirteen (13) counts of Obtaining Property by Deception contrary to Section 81(1) of the Victorian Crimes Act of 1958 constitutes in Mr. Wright’s and co-offender Mr. John Carson Craker’s receiving a total of approximately 11.2 in commission (including \$367,044 in bonus commission) via Amazon Bond Pty. Ltd., depending on the volume of business written, by submitting two hundred fifteen (15) life insurance proposals, and

paying premiums thereon (to the acceptance of the policies and payment of commissions) to the Australian Mutual Provident (AMP) Society through the Office of Melbourne Mutual Insurance, of which respondent is an insurance agent, out of which life proposals none are in existence and approximately 200 of which are alleged to have been false, in one or more of the following ways:

- (i) some policy-holders signed up only because they were told the policies were free (usually for 2 years) and no payments were required.
- (ii) some policy-holders were offered cash inducements (\$50 or \$100) to sign and had to supply a bank account no longer used (at which a direct debit request for payment of premiums would apply). These policy-holders were also told no payments by them were required.
- (iii) some policy-holders were introduced through the 'Daily Personnel Agency', and again were told the policies were free for 2 years as long as an unused bank account was applied.
- (iv) some policy-holders were found not to exist.

The one count of Attempting to Obtain Property by Deception contrary to Section 321(m) of the Victorian Crimes Act of 1958 constitutes in Mr. Wright's and Mr. Craker's attempting to cause the payment of \$2,870.68 commission to a bank account in the name of Amazon Bond Pty. Ltd. by submitting one proposal for Life Insurance to the AMP Society, the policy-holder of which does not exist with the end in view of paying the premiums thereon to insure acceptance of the policy and commission payments.

The one count of Perjury contrary to Section 314 of Victorian Crimes Act of 1958 constitutes in Mr. Wright's and Mr. Craker's signing and swearing before a Solicitor holding a current practicing certificate pursuant to the Legal Profession Practice Act (1958), a Statutory Declaration attesting to the validity of 29 of the most recent Life Insurance proposals of AMP Society and containing three (3) false statements.

Pursuant to Section 5 of PD No. 1069, in relation to the Extradition Treaty concluded between the Republic of the Philippines and Australia on September 10, 1990, extradition proceedings were initiated on April 6, 1993 by the State Counsels of the Department of Justice before the respondent court.

In its Order dated April 13, 1993, the respondent court directed the petitioner to appear before it on April 30, 1993 and to file his answer within ten days. In the same order, the respondent Judge ordered the NBI to serve summons and cause the arrest of the petitioner.

The respondent court received return of the warrant of arrest and summons signed by NBI Senior Agent Manuel Almendras with the information that the petitioner was arrested on April 26, 1993 at Taguig, Metro Manila and was subsequently detained at the NBI detention cell where petitioner, to date, continue to be held.

Thereafter, the petitioner filed his answer.

In the course of the trial, the petitioner testified that he was jobless, married to a Filipina, Judith David, with whom he begot a child; that he has no case in Australia; that he is not a fugitive from justice and is not aware of the offenses charged against him; that he arrived in the Philippines on February 25, 1990 returned to Australia on March 1, 1990, then back to the Philippines on April 11, 1990, left the Philippines again on April 24, 1990 for Australia and returned to the Philippines on May 24, 1990, again left for Australia on May 29, 1990 passing by Singapore and then returned to the Philippines on June 25, 1990 and from that time on, has not left the Philippines; and that his tourist visa has been extended but he could not produce the same in court as it was misplaced, has neither produced any certification thereof, nor any temporary working visa.

The trial court, in its decision dated 14 June 1993, granted the petition for extradition requested by the Government of Australia, concluding that the documents submitted by the Australian Government meet the

requirements of Article 7 of the Treaty of Extradition and that the offenses or which the petitioner were sought in his country are extraditable offenses under Article 2 of the said Treaty. The trial court, moreover, held that under the provisions of the same Article, extradition could be granted irrespective of when the offense - in relation to the extradition - was committed, provided that the offense happened to be an offense in the requesting State at the time the acts or omissions constituting the same were committed.[13]

Petitioner challenged the decision of the Regional Trial Court before the Court of Appeals assigning the following errors:

I. THAT THE HONORABLE RESPONDENT JUDGE GRAVELY ERRED IN GIVING RETROACTIVE FORCE AND EFFECT TO THE EXTRADITION TREATY DESPITE THE FACT THAT THE EVIDENCE ADDUCED BY THE RESPONDENT SHOW THAT THE ALLEGED OFFENSES FOR WHICH PETITIONER IS SOUGHT TO BE EXTRADITED TOOK PLACE IN 1988-1989 AT THE TIME THERE WAS NO EXTRADITION TREATY BETWEEN THE REPUBLIC OF THE PHILIPPINES AND AUSTRALIA.

II. THAT THE ACT OF THE HONORABLE RESPONDENT JUDGE IN GIVING RETROACTIVE FORCE AND EFFECT TO THE EXTRADITION TREATY BETWEEN THE REPUBLIC OF THE PHILIPPINES AND AUSTRALIA AMOUNTS TO AN 'EX POST FACTO LAW' AND VIOLATES SECTION 21, ARTICLE VII OF THE 1987 CONSTITUTION.

III. THAT THE HON. RESPONDENT JUDGE GRAVELY ERRED IN ORDERING THE EXTRADITION OF PETITIONER DESPITE THE FACT THAT THE EVIDENCE ADDUCED DO NOT SHOW THAT PETITIONER IS WANTED FOR PROSECUTION IN AUSTRALIA.

IV. THAT THE HON. RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN MISINTERPRETING THE EXTENDED STAY OF PETITIONER AS EVIDENCE OF PETITIONER'S DESIGN TO HIDE AND EVADE PROSECUTION IN AUSTRALIA.

V. THAT THE HON. RESPONDENT JUDGE GRAVELY ERRED IN ORDERING THE EXTRADITION OF PETITIONER WITHOUT SPECIFYING IN HIS ORDER OR DECISION THE SPECIFIC CHARGES FOR WHICH PETITIONER IS TO STAND TRIAL IN AUSTRALIA.

The Court of Appeals affirmed the trial court's decision on September 14, 1993 and denied petitioner's Motion for Reconsideration on December 16, 1993.[14] Reiterating substantially the same assignments of error which he interposed in the Court of Appeals, petitioner challenges in this petition the validity of the extradition order issued by the trial court as affirmed by the Court of Appeals under the Treaty. Petitioner vigorously argues that the trial court order violates the Constitutional prohibition against ex post facto laws. He avers that for the extradition order to be valid, the Australian government should show that he "has a criminal case pending before a competent court" in that country "which can legally pass judgement or acquittal or conviction upon him."

Clearly, a close reading of the provisions of the Treaty previously cited, which are relevant to our determination of the validity of the extradition order, reveals that the trial court committed no error in ordering the petitioner's extradition. Conformably with Article 2, Section 2 of the said Treaty, the crimes for which the petitioner was charged and for which warrants for his arrest were issued in Australia were undeniably offenses in the Requesting State at the time they were alleged to have been committed. From its examination of the charges against the petitioner, the trial court correctly determined that the corresponding offenses under our penal laws are Articles 315(2) and 183 of the Revised Penal Code on swindling/estafa and false testimony/perjury, respectively.[15]

The provisions of Article 6 of the said Treaty pertaining to the documents required for extradition are sufficiently clear and require no interpretation. The warrant for the arrest of an individual or a copy thereof, a statement of

each and every offense and a statement of the acts and omissions which were alleged against the person in respect of each offense are sufficient to show that a person is wanted for prosecution under the said article. All of these documentary requirements were duly submitted to the trial court in its proceedings a quo. For purposes of compliance with the provisions of the Treaty, the signature and official seal of the Attorney-General of Australia were sufficient to authenticate all the documents annexed to the Statement of the Acts and Omissions, including the statement itself.[16] In conformity with the provisions of Article 7 of the Treaty, the appropriate documents and annexes were signed by “an officer in or of the Requesting State”[17], “sealed with...(a) public seal of the Requesting State or of a Minister of State, or of a Department or officer of the Government of the Requesting State,”[18] and “certified by a diplomatic or consular officer of the Requesting State accredited to the Requested State.”[19] The last requirement was accomplished by the certification made by the Philippine Consular Officer in Canberra, Australia.

The petitioner’s contention that a person sought to be extradited should have a “criminal case pending before a competent court in the Requesting State which can legally pass judgement of acquittal or conviction”[20] stretches the meaning of the phrase “wanted for prosecution” beyond that intended by the treaty provisions because the relevant provisions merely require “a warrant for the arrest or a copy of the warrant for the arrest of the person sought to be extradited.”[21] Furthermore, the ‘Charge and Warrant of Arrest Sheets’ attest to the fact that petitioner is not only wanted for prosecution but has, in fact, absconded to evade arrest and criminal prosecution. Since a charge or information under the Treaty is required only when appropriate, i.e., in cases where an individual charged before a competent court in the Requesting State thereafter absconds to the Requested State, a charge or a copy thereof is not required if the offender has in fact already absconded before a criminal complaint could be filed. As the Court of Appeals correctly noted, limiting the phrase “wanted for prosecution” to persons charged with an information or a criminal complaint renders the Treaty ineffective over individuals who abscond for the purpose of evading arrest and prosecution.[22]

This brings us to another point raised by the petitioner both in the trial court and in the Court of Appeals. May the extradition of the petitioner who is wanted for prosecution by the government of Australia be granted in spite of the fact that the offenses for which the petitioner is sought in his country were allegedly committed prior to the date of effectivity of the Treaty.

Petitioner takes the position that under Article 18 of the Treaty its enforcement cannot be given retroactive effect. Article 18 states:

ENTRY INTO FORCE AND TERMINATION

This Treaty shall enter into force thirty (30) days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.

Either contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

We fail to see how the petitioner can infer a prohibition against retroactive enforcement from this provision. The first paragraph of Article 18 refers to the Treaty’s date of effectivity; the second paragraph pertains to its termination. Absolutely nothing in the said provision relates to, much less, prohibits retroactive enforcement of the Treaty.

On the other hand, Article 2(4) of the Treaty unequivocally provides that:

4. Extradition may be granted pursuant to provisions of this Treaty irrespective of when the offense in relation

to which extradition is requested was committed, provided that:

(a) it was an offense in the Requesting State at the time of the acts or omissions constituting the offense; and

(b) the acts or omissions alleged would, if they had taken place in the Territory of the Requested State at the time of the making of the request for extradition, have constituted an offense against the laws in force in that state.

Thus, the offenses for which petitioner is sought by his government are clearly extraditable under Article 2 of the Treaty. They were offenses in the Requesting State at the time they were committed, and, irrespective of the time they were committed, they fall under the panoply of the Extradition Treaty's provisions, specifically, Article 2 paragraph 4, quoted above.

Does the Treaty's retroactive application violate the Constitutional prohibition against ex post facto laws? Early commentators understood ex post facto laws to include all laws of retrospective application, whether civil or criminal.[23] However, Chief Justice Salmon P. Chase, citing Blackstone, The Federalist and other early U.S. state constitutions in *Calder vs Bull*[24] concluded that the concept was limited only to penal and criminal statutes. As conceived under our Constitution, ex post facto laws are 1) statutes that make an act punishable as a crime when such act was not an offense when committed; 2) laws which, while not creating new offenses, aggravate the seriousness of a crime; 3) statutes which prescribe greater punishment for a crime already committed; or, 4) laws which alter the rules of evidence so as to make it substantially easier to convict a defendant.[25] "Applying the constitutional principle, the (Court) has held that the prohibition applies only to criminal legislation which affects the substantial rights of the accused." [26] This being so, there is absolutely no merit in petitioner's contention that the ruling of the lower court sustaining the Treaty's retroactive application with respect to offenses committed prior to the Treaty's coming into force and effect, violates the Constitutional prohibition against ex post facto laws. As the Court of Appeals correctly concluded, the Treaty is neither a piece of criminal legislation nor a criminal procedural statute. "It merely provides for the extradition of persons wanted for prosecution of an offense or a crime which offense or crime was already committed or consummated at the time the treaty was ratified." [27]

In signing the Treaty, the government of the Philippines has determined that it is within its interests to enter into agreement with the government of Australia regarding the repatriation of persons wanted for criminal offenses in either country. The said Treaty was concurred and ratified by the Senate in a Resolution dated September 10, 1990. Having been ratified in accordance with the provisions of the 1987 Constitution, the Treaty took effect thirty days after the requirements for entry into force were complied with by both governments.

WHEREFORE, finding no reversible error in the decision of respondent Court of Appeals, we hereby AFFIRM the same and DENY the instant petition for lack of merit.

SO ORDERED.

Davide, Jr., Bellosillo, and Quiason, JJ., concur.

Cruz, J., (Chairman), on official leave.

[1] OPPENHEIM, INTERNATIONAL LAW: A TREATISE 362-369 (1912)

[2] Cited in BISHOP, INTERNATIONAL LAW 471 (1962).

[3] *Terlindan v. Arnes*, 184 U.S. 270, 289 (1902).

[4] *Factor v. Laubenheimer*, 270 U.S. 276 (1933).

[5] FENWICK, CASES OF INTERNATIONAL LAW 448 (1951).

[6] See, TREATY OF EXTRADITION BETWEEN AUSTRALIA AND THE REPUBLIC OF THE PHILIPPINES, cited Treaty.

[7] See, Treaty, art. 18.

[8] *Id.*, art. 1. Emphasis supplied.

[9] *Id.*, art. 6.

[10] *Id.*, art. 2.

[11] *Id.*

[12] C.A. Decision, pp. 1-5, *Rollo*, pp. 33-37

[13] *Id.*

[14] *Rollo*, pp. 45-49.

[15] Commission of fraud by means of false pretenses or fraudulent acts executed prior to or simultaneous with the commission of fraud (Art. 315[2]):

(a) By using fictitious name or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

(b) By altering the quality, fineness or weight of anything pertaining to his art or business.

(c) By pretending to have bribed any Government employee without prejudice to the action for calumny, which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.

(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (As amended by Rep. Act NO. 4885, approved June 17, 1967).

Art. 183. False testimony in other cases and perjury in solemn affirmation. xxx (I)mposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

[16] See, Art. 6.

[17] Art. 7(a).

[18] Art. 7(b).

[19] Art. 7(c).

[20] Rollo, pp. 21.

[21] Art. 6, sec. 2.

[22] C.A. Decision, pp. 41, Rollo, pp. 41.

[23] 2 STORY, COMMENTARIES, Sec. 1345.

[24] 3 Dall. 3 U.S. 386 (1798).

[25] Id. See *Mekin v. Wolfe*, 2 Phil.74, 77-78(1903). See also, *In re Kay Villegas Kami* where the following two elements were added: 5) assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful; 6) deprives a person accused of a crime some lawful protection to which he has become entitled, such as the protection of the former conviction or acquittal, or a proclamation of amnesty.

[26] 1 BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 489 (1987), citing *Mekin*, Id.

[27] Rollo, pp. 39., C.A. DECISION, pp. 7.

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