

Moot Appeal / Motion to Dismiss

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**COURT OF APPEAL OF THE STATE OF CALIFORNIA
[THIRD/FIFTH] APPELLATE DISTRICT**

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	Crim. _____
Plaintiff and Respondent [orAppellant],)	
)	([County]
)	Superior Court
)	No. [county no.]
v.)	
)	MOTION TO DISMISS;
JOHN SMITH,)	POINTS & AUTHORITIES
)	
Defendant and Appellant [or Respondent].))	

MOTION TO DISMISS APPEAL AS MOOT

Pursuant to California Rules of Court, rule 8.54, [appellant/respondent] moves to dismiss this appeal on grounds it is moot because [DESCRIBE WHY IT IS MOOT, e.g., in a People's appeal, appellant's failure to comply with the Interstate Agreement on Detainers, Penal Code section 1389.] This motion will be based on the accompanying memorandum of points and authorities, and the certified copies of documents attached to the memorandum as exhibits.

POINTS AND AUTHORITIES

[DESCRIBE THE FACTS GIVING RISE TO YOUR CLAIM OF MOOTNESS, i.e. By an information filed [DATE] [appellant/respondent] was charged with [DESCRIBE CHARGES]. The charges arose out of an incident occurring on [DATE] at [LOCATION OF INCIDENT]. Although a complaint was filed in the Municipal Court, [appellant/respondent] did not make an appearance until the dates described in this motion.

On [DATE] respondent began serving a prison sentence in the [NAME FOREIGN CITY, STATE, CORRECTIONAL INSTITUTION] (Exhibit A.) On [DATE], pursuant to the provisions of Article IV of the Agreement on Detainers, the prosecuting attorney of [NAME CALIFORNIA COUNTY] made a request for temporary custody of [appellant/respondent] to the [NAME FOREIGN STATE]'s Department of corrections. (Exhibits B, C.) On [DATE] the [NAME FOREIGN COURT] ordered that, pursuant to the Agreement on Detainers Act, [FOREIGN STATE] deliver respondent to the custody of California. (Exhibit D.)

[Appellant/Respondent] was transported to Placer County and he was arraigned on [DATE]. Represented by the public defender, [appellant/respondent] pled not guilty to the charges in the information. (CT #.)

On [DATE] [appellant/respondent] filed a motion to dismiss the information pursuant to Penal Code section 995 on ground he was unable to freely and effectively cross-examine the prosecutrix due to the prosecution's withholding of critical

discovery until after the preliminary examination. (CT # - #.) The court granted [appellant's/respondent's] motion on [DATE]. (CT #.)

[Appellant/Respondent] filed its notice of appeal on [DATE]. On [DATE] appellant sent a Prosecutor's Report on Disposition of Charges to [FOREIGN STATE'S INSTITUTION] reporting that the [NAME COUNT] Superior Court had granted [appellant's/respondent's] motion to set aside the information and that the District Attorney had filed an appeal to have the dismissal set aside and the charges reinstated. (Exhibit F.) [Appellant/Respondent] was then returned to [NAME FOREIGN STATE] to serve the remainder of his sentence, where he remains.

ARGUMENT [for sample issue]

THE CHARGES AGAINST [APPELLANT/RESPONDENT] AND THIS APPEAL MUST BE DISMISSED WITH PREJUDICE BECAUSE RESPONDENT WAS RETURNED TO [FOREIGN STATE] PRIOR TO THE CONCLUSION OF HIS CALIFORNIA TRIAL

The Interstate Agreement on Detainers Act at Penal Code section 1389, Articles I through IX, provides "[s]ection 1389 sets forth extensive procedural rules designed to enable prisoners held in one jurisdiction to be expeditiously tried on concurrently pending charges in another, either at the request of the prisoner (§1389, art. III) or by initiation of the jurisdiction in which charges are pending. (§1389, art. IV.) No matter who makes the request, there must be a timely disposition of the pending charges before the prisoner's return to the original place of imprisonment. (See §1389, art.III.subd.(a), art. IV, subd.(c).)" (*People v. Litke* (198) 112 Cal.App.3d

489, 493, emphasis in original.)

Subdivision (a) of Article IV specifically provides:

“If trial is not had on any indictment, information or complaint contemplated thereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.”

And,

“Article IV, subdivision (e), provides for no exceptions. If a receiving state returns a defendant to the sending state at any stage of the prosecution before the trial is concluded, the defendant is entitled to have the action dismissed with prejudice. The Interjurisdictional Agreement on Detainers (Pen. Code, §1389) makes no provision for any interim return of the defendant to the sending jurisdiction. The Agreement contemplates one transfer of temporary custody, and one such transfer only. Once the receiving state obtains temporary custody of defendant, all prosecution proceedings must be completed before return of the defendant to the sending state, in order of the receiving state to avoid having to dismiss the action with prejudice.” (*In re Blake* (1979) 99 Cal.App.3d 1004, 1016.)

Here subdivision (e) and the above-cited cases mandate the dismissal with prejudice of the charges against [appellant/respondent] arising out of the events on [DATE]. As shown by the attached Exhibits, respondent was serving a sentence in [FOREIGN STATE] when the charges were filed in California. Pursuant to the Agreement on Detainers, the prosecuting officers in [NAME] County requested and

received temporary custody of [appellant/respondent] so he might be tried on the California charges. Because [appellant/respondent] was returned to [FOREIGN STATE] before the disposition of the California case on appeal or at trial, [appellant/respondent] has failed to comply with the provisions of the Agreement and the charges against him must be dismissed with prejudice. As dismissing the underlying charges moots this appeal, this appeal must also be dismissed.

CONCLUSION

For the foregoing reasons, defendant and [appellant/respondent] requests that this court order dismissal with prejudice of the charges filed in [NAME] County superior Court Number [#] and that it dismiss appeal number [APPEAL #] currently pending before it.

Date:

Respectfully submitted

[YOUR NAME]