IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 08-0421

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SANTOS ANGEL CHAVEZ,

Defendant and Appellant.

ANDERS BRIEF

On Appeal from the Montana Third Judicial District Court,
Powell County, The Honorable Ray J. Dayton, Presiding

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STATEMENT OF THE ISSUES

1. Whether the undersigned counsel should be permitted to withdraw from Defendant-Appellant Chavez's appeal in accord with the criteria established by the United States Supreme Court in *Anders v. California*, 386 U.S. 738 (1967).

2. The record might arguably support certain appeal issues.

STATEMENT OF THE CASE AND FACTS

Santos Angel Chavez (Chavez) was sentenced to Montana State Prison on April 11, 2008 for various crimes. (CONWEB).

On June 13, 2008, the State filed a Complaint and Request for Extradition Under Interstate Act on Detainers. (D.C. Doc. 1.) Attached to the Complaint was the Arizona warrant stating Chavez was wanted in that State for Aggravated Assault. (D.C. Doc. 1.) The warrant stated Chavez was present in Arizona at the time of the offense in that state, and that the offense was a felony and carried a penalty of imprisonment which exceeded one year. The State of Arizona filed a detainer against Chavez at MSP with regard to the charge. Chavez requested to be brought before a court of record to apply for a Writ of Habeas Corpus regarding Arizona's Detainer. (D.C. Doc. 1 at 2, and Agreement on Detainers Form V-A signed by Chavez.)

An Extradition Hearing was scheduled for July 1, 2008, in the district court. (D.C. Doc. 2.) At this hearing, Chavez was informed of his right to contest the extradition under a Writ for Habeas Corpus. Under the Writ, the district court

judge reminded Chavez that only certain challenges to the extradition were allowed and that the basis for challenging the extradition were set forth in a document signed by Chavez. (7/1/08 Tr. at 3:17-4:2; D.C. Doc. 1 at Agreement on Detainers Form V-A.) Chavez could challenge the extradition on a certain limited basis: That the information, complaint, or indictment substantially charge the person demanded with having committed a crime under the law of the demanding state; that the documents submitted by the demanding state are in legal form; that the identity of the prisoner had been established by the demanding state. (7/1/08 Tr. at 3:17-4:2; D.C. Doc. 1 at Agreement on Detainers Form V-A.)

Chavez refused to be extradited to Arizona and a public defender was appointed. (7/1/08 Tr. at 4; D.C. Doc. 3.) After the district court appointed a public defender, Chavez inquired whether he would go through the extradition process for two other outstanding warrants from Arizona. (7/1/08 Tr. at 5-6.) The judge responded that the district court did not have any information on other warrants, that the court only had the information on this particular warrant. (7/1/08 Tr. at 6.) The judge informed Chavez that the court was not there to decide whether his due process rights were violated for the other warrants. (7/1/08 Tr. at 6.) The district court scheduled the next hearing for July 22, 2008. (7/1/08 Tr. at 5; D.C. Doc. 3.)

At the next hearing, the district court was informed that Chavez wanted a substantive hearing. (7/22/08 Tr. at 1.) The parties discussed an appropriate date

and set the Detainer Hearing for August 12, 2008. (7/22/08 Tr. at 1; D.C. Doc. 5.) Chavez was asked whether August 12th would be an appropriate date for the hearing and he responded, "That's perfect." (7/22/08 Tr. at 1:23-2:5.)

By motion, the State requested a continuance for the August 12, 2008, Detainer Hearing because it had been unable to locate an expert witness to testify. (D.C. Doc. 6.) The district court granted the State's motion to continue and reset the Detainer Hearing two weeks later for August 26, 2008.

At the Detainer Hearing on August 26th, the district court asked Chavez's counsel whether a motion for habeas corpus had been filed. (8/26/08 Tr. at 2.) Defense counsel responded in the negative and stated there was no basis to file a writ of habeas corpus. (8/26/08 Tr. at 2.) Chavez's counsel then proceeded to state that although Chavez had agreed at an earlier hearing that his name was indeed the one on the Arizona warrant, he now denied that he was the Santos Angel Chavez that Arizona was looking for. (8/26/08 Tr. at 2-3.) Counsel for Chavez then stated it was his client's position that "the extradition process needed to start over again because he was not afforded the entirety of his rights from the beginning because he wanted the opportunity to write to the Governor of Arizona regarding the Governor's Warrant and contest it with the Governor in Arizona." (8/26/08 Tr. at 3:6-10.) The State objected on the basis that Chavez's proposed course of action was not provided for by either case law or the Interstate

Agreement on Detainers. The State then recited the limited basis for which Chavez could contest the Arizona detainer. (8/26/08 Tr. at 3:11-20.)

After conferring briefly with his client, counsel also stated that Chavez was upset that the court date for the hearing was moved. (8/26/08 Tr. at 3-4.) The district court responded that the hearing was set for this time, "frankly in anticipation of a receipt of a motion for writ of habeas corpus where those issues that you indicate he now, at least to his identity, would be raised. But the motion hasn't been filed. But here we are and everybody seems to be in agreement as to what the hearing would be about." (8/26/08 Tr. at 4.) Upon questioning from the district court, the State was ready to proceed and establish the matters necessary for extradition. (8/26/08 Tr. at 4.)

The State offered two witnesses: Mike Micu (Micu), an investigator for the Department of Corrections, and Dave Zwroka (Zwroka), forensic scientist at the Montana State Crime Lab. (8/26/08 Tr. at 4, 11.)

Micu is familiar with the procedure and regularly processes the paperwork for detainers and extraditions. (8/26/08 Tr. at 5.) Micu reviewed the paperwork from Arizona for the detainer placed on Chavez. (8/26/08 Tr. at 5.) Through a series of questions, the State showed that the paperwork from Arizona was correct and in legal form and that it alleged Chavez was in Arizona at the time the offense was committed. (8/26/08 Tr. at 5-7, 10; D.C. Doc. 11, State's Ex. 1.) Chavez did

not object to admission of the paperwork. (8/26/08 Tr. at 8; D.C. Doc. 11, State's Ex. 1.)

Through Micu, the State verified that the Arizona identification picture was of a Reymundo Raphael Chavez, but that "Santos Chavez" was listed as an alias. (8/26/08 Tr. at 8-9; D.C. Doc. 11, State's Ex. 1 at Maricopa County Sheriff's Office Identification Information.) Micu was concerned that the person in the identification picture had a shaved head and Chavez had a full head of hair, therefore he sent the fingerprints provided by Arizona along with ones obtained from Chavez to the State Crime Lab for comparison and analysis. (8/26/08 Tr. at 9.) Chavez did not cross-examine Micu. (8/26/08 Tr. at 10.)

In performing the comparison and analysis of the fingerprints, Zrowka testified that he examined the ten-print card from MSP along with the computer generated print card from Arizona. (8/26/08 Tr. at 12.) Zrowka compared the left index finger from the Montana ten-print card with the left index finger of the Arizona card and concluded that the fingerprints were "made by one and the same person to the exclusion of all others." (8/26/08 Tr. at 13:19-20; D.C. Doc. 11, State's Ex. 2.) Zwroka reduced his findings to writing which were admitted, with no objection, as State's Exhibit 2. (8/26/08 Tr. at 13-14; D.C. Doc. 11, State's Ex. 2.) Zwroka testified about the process he used to determine the fingerprints matched, looking for individualized characteristics (such as loops), and then for matching bifurcations (splitting or ending of ridges) and lastly, whether any

dissimilarities existed. (8/26/08 Tr. at 14-15.) The State verified with Zwroka that his work was verified by another certified examiner under a technical and administrative review process. (8/26/08 Tr. at 16.) Chavez did not cross-examine Zwroka. (8/26/08 Tr. at 16.)

The State concluded that it provided the district court with the statutorily required request for the detainer and transfer of Chavez pursuant to the request from Arizona which was properly signed off by both the prosecuting attorney and the judge handling the case. The State further supplied the district court with certified copies of the Complaint and the Warrant seeking Chavez's arrest. The State also declared that the fingerprint analysis concluded Chavez was one and the same person that Arizona was seeking and requested the district court enter an order that Chavez be remanded to the temporary custody of authorities in Arizona.

Chavez's counsel responded that his client did not wish to testify. Defense counsel again stated Chavez wished to raise two issues to the district court: first, that the extradition proceeding should have to start over because Chavez was not informed of his ability to contact the Governor of Arizona; and secondly, he wanted to contest the extradition on the basis that he was not getting extradition process for two other Arizona warrants. (8/26/08 Tr. at 17-18.)

The district court found that Chavez was advised substantially as to all of the matters necessarily pertaining to the detainer action and that the evidence was plentiful that Chavez was the same individual who was wanted by Arizona. The

district court also stated that Chavez "submitted no evidence to the contrary under any standard of proof." (8/26/08 Tr. at 18-19; *see also*, D.C. Doc. 12, Order (Chavez failed to provide any evidence that he was not the person sought by Arizona or that the State's paperwork was not in order.).)

STANDARD OF REVIEW

"[T]he general rule is that asylum, sending or custody, state courts have only limited jurisdiction and limited judicial review over a transfer sought by a receiving state pursuant to the [Interstate Agreement on Detainers]." *Blakey v. District Court*, 232 Mont. 178, 182, 755 P.2d 1380, 1382 (1988) (citations omitted). "Further, this limitation has generally been strictly construed to allow inquiry similar to the inquiry allowed in extradition proceedings. [Citations Omitted.] Review by the asylum or custody state is allowed but is limited in scope to the issues concerning technical sufficiency of the extradition documents, identification of the accused, whether the accused has been substantially charged with a crime, and whether the accused is a fugitive." *Blakey v. District Court*, 232 Mont. at 182, 755 P.2d at 1382-83 (citations omitted).

ARGUMENT

I. UNDERSIGNED COUNSEL SHOULD BE PERMITTED TO WITHDRAW FROM DEFENDANT-APPELLANT'S APPEAL IN ACCORD WITH *ANDERS v. CALIFORNIA*.

In *Anders*, the United States Supreme Court concluded that when counsel on appeal finds the case to be wholly frivolous after a conscientious examination,

counsel should advise the court and move to withdraw. *Anders*, 386 U.S. at 744. The request to withdraw must be "accompanied by a brief referring to anything in the record that might arguably support the appeal." *Anders*, 386 U.S. at 744. This brief addresses those potential matters.

However, in making such a presentation, appellate defenders have an inherent dilemma between their duty to advocate for their indigent client, and the obligation of their oath and the rules of procedure and ethics that prohibit them from making non-meritorious claims. The United States Supreme Court addressed this dilemma as follows:

> We interpret the discussion rule [of *Anders*] to require a statement of reasons why the appeal lacks merit which might include, for example, a brief summary of any case or statutory authority which appears to support the attorney's conclusions, or a synopsis of those facts in the record which might compel reaching that same result. We do not contemplate the discussion rule to require an attorney to engage in a protracted argument in favor of the conclusion reached; rather, we view the rule as an attempt to provide the court with 'notice' that there are facts on record or cases or statutes on point which would seem to compel a conclusion of no merit.

McCoy v. Court of Appeals of Wisconsin, District 1, 486 U.S. 429, 440 (1988); *see also*, Mont. Code Ann. § 46-8-103(2). Thus, the appellate defender must walk that fine line between advocacy and diligence wherein thorough research is the undoing of her client's appeal. Here, the undersigned is compelled by her duty of candor before the Court in accord with *Anders* and Mont. Code Ann. § 46-8-103(2) to

provide this Court with notice that diligent research has yielded just such a result. No non-frivolous issues are present in this appeal.

II. THE RECORD MIGHT ARGUABLY SUPPORT CERTAIN APPELLATE ISSUES.

A. Defendant May Wish to Argue Delay in the Detainer Hearing.

No person arrested upon such warrant may be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken without delay before a judge of a court of record in this state. The judge shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel. Mont. Code Ann. § 46-30-217(1).

If the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of the court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When the writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecutor, the accused, and to the agent of the demanding state. Mont. Code Ann. § 46-30-217(2).

B. Defendant May Wish to Argue He Did Not Receive Due Process.

Under the Interstate Agreement on Detainers, sending or custody state courts have limited jurisdiction and limited judicial review over a transfer sought by a

receiving state. *Blakey*, 232 Mont. at 182, 755 P.2d at 1382. The limitation has been strictly construed to allow inquiry similar to that allowed in extradition proceedings. *Blakey*, 232 Mont. at 182, 755 P.2d at 1382. Review by the sending or custody state is allowed but is limited to the issues concerning technical sufficiency of the documents, identification of the accused, whether the accused has been substantially charged with a crime, and whether the accused is a fugitive. *Blakey*, 232 Mont. at 182, 755 P.2d at 1382-83 (citations omitted).

In a habeas corpus proceeding brought under an extradition warrant, "the court cannot consider the violation of the accused's constitutional rights in the state demanding extradition, since the right of redress for any violation of his constitutional rights lies in the courts of the demanding state." *In re Hart*, 178 Mont. 235, 249, 583 P.2d 411, 418 (1978). "The court in an asylum state cannot hear and determine the constitutional validity of phases of penal action by the demanding state with respect to a fugitive or his offense, or the constitutionality of the statute upon which the fugitive is charged." *In re Hart*, 178 Mont. at 249, 583 P.2d at 418.

> On habeas corpus in interstate extradition cases, the court will not decide whether the demanding state has deprived accused of constitutional guarantees of due process or equal protection, ... While there has been some authority to the contrary, it has been held that the court cannot consider whether accused is unlikely to have a fair trial or any trial at all in the courts of the demanding state. . . .

In re Hart, 178 Mont. at 249, 583 P.2d at 418.

> As a general rule, right of a person to habeas corpus relief depends on the legality or illegality of his detention, and this in turn depends on whether the fundamental requirements of law have been complied with, and not at all on the guilt or innocence of the prisoner, or the justice or injustice of his detention on the merits."

In re Hart, 178 Mont. at 249, 583 P.2d at 418 (*citing* 39 C.J.S. Habeas Corpus § 35, p. 555).

CONCLUSION

Chavez's appeal is frivolous and this Court should grant the undersigned's motion to withdraw as counsel on direct appeal.

Respectfully submitted this ____ day of November, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing *Anders* Brief to be mailed to:

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this *Anders* brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

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LISA S. KORCHINSKI