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**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

HOWARD KEITH HENSON,
Petitioner,

v.
THE HON. THOMAS B. LINDBERG,
JUDGE OF THE SUPERIOR COURT,
YAVAPAI COUNTY,
Respondent,

and
STATE OF ARIZONA,
Real Party in Interest.

Court of Appeals No. _____
Superior Court Case No. CV 2007-0494

PETITION FOR SPECIAL ACTION

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1 **JURISDICTIONAL STATEMENT**

2 This Court has jurisdiction pursuant to A.R.S. §12.120(A)(4). Petitioner takes this
3 special action from the trial court's denial of his Petition for a Writ of Habeas Corpus.

4 Petitioner sought a writ of Habeas Corpus as relief from a Governor's Warrant on
5 Extradition seeking his rendition to California authorities, as the said Warrant and supporting
6 documents contain numerous defects and inconsistencies, and as evidence supplied by
7 California authorities must establish that he cannot be the fugitive sought.

8 Presently, Petitioner remains in the custody of the State of Arizona, his extradition
9 temporarily stayed by the trial court until 5:00 pm on Monday, May 21, 2007, specifically so
10 that Petitioner may initiate this Special Action and obtain from the Court of Appeals a further
11 stay of the pending extradition. (Appendix, Item 12).

12 To the extent necessary to permit Petitioner to perfect his Special Action and in the
13 furtherance of justice, Petitioner requests a suspension of the rules, in accord with Rule 7(i)
14 of the Rules of Procedure for Special Actions and Rule 3 of the Rules of Civil Appellate
15 Procedure, and further requests this Court issue an immediate stay of his Extradition so that
16 his Petition may be heard.

17 **PROCEDURAL HISTORY**

18 Petitioner was arrested without warrant, in Prescott, Arizona, on suspicion of being a
19 fugitive from justice from California, on February 2, 2007. Following his initial appearance
20 before the Hon. Thomas B. Lindberg on February 5, 2007, and after having ascertained that
21 the California fugitive was sought for having failed to appear for sentencing on a single
22 misdemeanor, Petitioner was released on bond, and the matter was referred to the Hon.
23 Arthur Markham in the Prescott Justice Court.

24 After receiving disclosure materials from the Yavapai County Attorney which included
25 exculpatory information, Petitioner requested dismissal on February 27, 2007 and again on
26 April 20, 2007 from the Justice Court. The matter was continued until a May 8, 2007 hearing

1 in the Justice Court, during which it came to light that the Warrant on Extradition and its
2 accompanying documents had been filed with the Justice Court and concealed from
3 Petitioner and his counsel. Petitioner was taken into custody, and a hearing pursuant to
4 A.R.S. 13-3850 was set before the Hon. Judge Lindberg for May 9, 2007. During this
5 hearing, Petitioner, in accordance with A.R.S. 13-3850, requested reasonable time within
6 which to apply for a writ of habeas corpus, but was granted only 3 days, until noon on May
7 14, 2007, to file his petition. (Appendix, Item 1). Said request was timely filed, though
8 necessarily far more limited and without evidence as fully developed as more time would
9 have permitted, and a hearing and oral argument were held before the Hon. Judge Lindberg
10 on May 18, 2007. (Appendix, Item 2). The writ was denied, but Petitioner was granted a 1
11 day stay on the extradition to permit him to attempt to gain a further stay from this Court.
12 (Appendix, Item 12).

13 **JURISDICTION**

14 The trial court's rulings, first in permitting only 3 days for the "reasonable time within
15 which to apply for a writ of habeas corpus" set forth in A.R.S. 13-3850, then in denying the
16 writ despite evidence presented that Petitioner could not have been the fugitive sought and
17 evidence that the documents accompanying the Warrant on Extradition are both inconsistent
18 and questionable, are arbitrary and capricious and an abuse of discretion. *Caruso v.*
19 *Superior Court*, 100 Ariz. 167, 412 P.2d 463 (1966).

20 Petitioner has no equally plain, speedy and adequate remedy by way of appeal
21 because permitting extradition in this matter will be in violation of Arizona law and a violation
22 of Petitioner's State and Federal rights to due process of law, and deprive Arizona of further
23 jurisdiction or otherwise render the matter moot, thus preventing review. Due process
24 violations are reviewable by way of Special Action. See, *Mack v. Cruikshank*, 196 Ariz. 541,
25 2 P.3d 100 (App. 1999).

26 Moreover,

1 The availability of a remedy by appeal does not necessarily
2 foreclose this court's exercise of discretion to accept jurisdiction.
3 *Ariz. Dep't of Pub. Safety v. Superior Court*, 190 Ariz. 490, 491, 949
4 P.2d 983, 984 (App. 1997).

5 The issue of the trial court's failure to permit a reasonable time within which to apply
6 for a writ of habeas corpus per A.R.S. 13-3850, and consequently denying the application
7 which could not present more fully developed evidence and argument due to the extreme
8 time pressure, is a pure issue of law, and therefore special action jurisdiction is appropriate.
9 See *Orme School v. Reeves*, 166 Ariz. 301, 303, 802 P.2d 1000, 1002 (1990).

10 Special action jurisdiction is "uniquely proper when 'under no Rule of law can a trial
11 court's actions be justified.' *King [v. Superior Court]*, 138 Ariz. 147, 149-50, 673 P.2d 787,
12 789-90 (1983)". *Harris Trust Bank of Ariz. v. Superior Court*, 188 Ariz. 159, 162, 933 P.2d
13 1227, 1230 (App. 1997).

14 **EXCEPTIONAL ISSUES**

15 Because of the unusual time constraints present in this matter, Petitioner does not yet
16 have a transcript of the trial court proceedings, and only a fax copy of the order granting the
17 limited stay. (Appendix, Item 12). Upon inquiry, Petitioner is informed and believes that the
18 court reporter from the May 18, 2007 hearing, Renae Bixby, will be on vacation for a week,
19 and will be unable to complete a transcript for at least a week thereafter. Petitioner requests
20 that, for good cause showing and in the furtherance of justice, the requirements and
21 provisions of the rules be suspended to the extent necessary to permit Petitioner to perfect
22 his Special Action and in accord with Rule 7(i) of the Rules of Procedure for Special Actions
23 and Rule 3 of the Rules of Civil Appellate Procedure, and further requests this Court issue
24 an immediate stay of his Extradition so that his Petition may be heard. Where the record,
25 exhibits, or appended documents are not yet available, Petitioner submits this Petition upon
26 information and belief. Petitioner will prosecute this petition with speed and diligence.

1 **STATEMENT OF THE ISSUES**

2 The trial court abused its discretion in:

- 3 1. Not following the applicable statute, A.R.S. 13-3850, requiring a reasonable time
4 within which to apply for a writ of habeas corpus, instead granting a mere 3 days.
5 2. Accepting as sufficient the documents upon which the extradition warrant rests,
6 despite evidence of internal contradictions and inconsistencies, evidence of
7 irregularities, and other serious defects.

8 **ARGUMENT**

9 **DENIAL OF A REASONABLE TIME FOR APPLYING FOR HABEAS**

10 A.R.S. 13-3850 provides that, upon arrest upon the Governor's Warrant on
11 Extradition, if Petitioner states a "desire to test the legality of his arrest, the prisoner shall be
12 taken forthwith before a judge of a court of record, who shall fix a reasonable time to be
13 allowed him within which to apply for a writ of habeas corpus." Petitioner was arrested upon
14 the Governor's Warrant on Extradition on May 8, 2007, and taken before the Hon. Thomas
15 B. Lindberg of the Yavapai County Superior Court on May 9, 2007, who permitted 3 days
16 within which to file the habeas petition. (Appendix, Item 1).

17 While a cursory review of the case law finds little exactly on point, the United States
18 Court of Appeals for the Eleventh Circuit has stated that this provision from the Uniform
19 Criminal Extradition Act guarantees the petitioner "time in which to apply for the writ and
20 holds his extradition in limbo during such time. It prevents an unseemly race to get the
21 prisoner to the state line while he is trying to get a petition filed." *Payne v. Burns*, 707 F.2d
22 1302, 1303 (C.A.Ala.,1983). The United States Court of Appeals, Seventh Circuit, held that
23 violations of rights protected by state law derived from federal law, such as the Uniform
24 Criminal Extradition Act, may form a cause of action for deprivation of rights under 42 U.S.C.
25 1983. *McBride v. Soos*, 594 F.2d 610, 613 (C.A.Ind., 1979).

1 While, after his initial arrest on February 2, 2007, Petitioner may have had reason to
2 believe that a Warrant on Extradition might be secured, the Uniform Criminal Extradition Act
3 “guarantees that every state prisoner, prior to extradition, has a full opportunity to challenge
4 his extradition, including the opportunity to file for and be heard on a petition for habeas
5 corpus,” but, “it is only after examination of [the extradition] documents that it becomes
6 possible to evaluate the likelihood of successfully challenging the legality of the proposed
7 extradition.” *Feilke v. Governor*, 414 F.Supp. 10 (D.C.Pa. 1976).

8 As Petitioner did not learn, in fact, was prevented from learning, not only the existence
9 of, but the contents of the extradition documents until May 8, 2007, and thereupon at the
10 earliest opportunity, on May 9, 2007, requested a reasonable time to apply for a writ of
11 habeas corpus, by requiring Petitioner to file his request before noon on May 14, 2007, the
12 trial court deprived Petitioner of his ability to fully develop the evidence and the application,
13 and thus violated his rights to due process.

14 **INSUFFICIENT AND QUESTIONABLE SUPPORTING DOCUMENTS**

15 A governor's warrant of extradition is not final and conclusive, and the accused is
16 entitled to question the sufficiency of the requisition in a habeas corpus proceeding. *Ex*
17 *parte Rubens (Rubens v. Boies)*, 73 Ariz. 101, 238 P.2d 402 (1951), *certiorari denied* 344
18 U.S. 840, 73 S.Ct. 50, 97 L.Ed. 653. An affidavit that accused is a fugitive from justice is not
19 conclusive and may be refuted by the accused. 35 C.J.S., Extradition; *State v. Flowers*, 9
20 Ariz.App. 440, 453 P.2d 536 (1969).

21 The reviewing court is duty-bound to review the extradition request for want of
22 jurisdiction. *Id.*, see also *Applications of Oppenheimer*, 95 Ariz. 292, 389 P.2d 696 (1964),
23 *certiorari denied* 84 S.Ct. 1359, 377 U.S. 948, 12 L.Ed.2d 311.

24 In a habeas corpus proceeding challenging extradition, the warrant on extradition and
25 accompanying documents filed in the office of the Secretary of State are the proper subject
26 of judicial notice. *Flowers, supra; Oppenheimer, supra*. Where the lawfulness of the

1 extradition is questioned, it is essential that the Court take such judicial notice and in fact
2 examine the documents. *Flowers, supra. Rubens* requires affirmative action by the trial
3 court. *Id.*

4 Petitioner asks that this Court take judicial notice of the warrant on extradition and
5 accompanying documents, filed in this matter in the office of the Secretary of State on or
6 about April 10, 2007, and that said documents establish that he is not the individual sought
7 as a fugitive.

8 **IDENTIFICATION OF FUGITIVE**

9 With few exceptions (as detailed further), the fugitive sought in the Riverside County,
10 California matter, Case No. HEM014371, is consistently identified as “Keith Henson”,
11 including in the “Factual Summary” of March 23, 2007 prepared by the Riverside District
12 Attorney’s Office (Appendix, Item 3), in the “Application for Requisition” of March 23, 2007
13 prepared and sworn to by a Riverside District Attorney (Appendix, Item 4), in the Riverside
14 District Attorney’s Office affidavit of March 8, 2007 (Appendix, Item 5), on each of the 31
15 pages of the sealed and certified records from the Superior Court of California, County of
16 Riverside (Appendix, Item 6), and in the February 22, 2007 letter from the Riverside County
17 Sheriff (Appendix, Item 7). Importantly, in Appendix, Item 4, a Riverside District Attorney
18 states under oath that the fugitive’s true name is “Keith Henson”.

19 Most critical, the sealed and certified records from the Superior Court of California,
20 County of Riverside, document that the fugitive “Keith Henson”, was arrested on felony
21 charges of “Criminal Threats”, a violation of California Penal Code § 422, on July 19, 2000,
22 by the Riverside County Sheriff’s Office. (Appendix, Item 6). The fact of the arrest is found
23 on the first page of the sealed and certified docket report, and repeated at the top of each of
24 26 pages thereof. (*Id.*).

25 In a motion to the Prescott Justice Court filed February 27, 2007, Petitioner brought
26 some of these discrepancies to light. Only thereafter do the acts of the Governor’s of

1 Arizona and California list the name of the fugitive as “Keith Henson aka Howard Keith
2 Henson”, while the remaining supporting documents and the records of the Riverside District
3 Attorney continue to list the fugitive as “Keith Henson”.

4 **IDENTIFICATION OF PETITIONER**

5 Petitioner acknowledged and agreed that his true and full name, “Howard Keith
6 Henson”, is reflected in the caption of the instant matter and before the trial court, and that
7 he is so listed and depicted in the 1997 California driving license extract included in the
8 accompanying documents and also attached to the February 22, 2007 letter from the
9 Riverside County Sheriff in Appendix, Item 7.

10 In that letter to the Yavapai County Attorney, the Riverside Sheriff admits that the
11 Petitioner identified in that attachment, “has never been arrested by our agency” and that
12 they do not possess a “booking photo or fingerprints” depicting Petitioner.

13 **INCONSISTENT WARRANTS**

14 Among the documents accompanying the warrant on extradition was found a bench
15 warrant. (Appendix, Item 8). A previous disclosure to Petitioner on April 11, 2007, included
16 another version of the same warrant, missing dates and the name of the signing judge.
17 (Appendix, Item 9). That there could exist two versions of the same warrant brings the
18 accuracy and validity of that court’s record regarding this case into question.

19 Another warrant, (Appendix, Item 10), apparently faxed by Riverside County to the
20 Prescott Police Dept. upon Petitioner’s original arrest, is not listed in the certified court
21 docket. (Appendix, Item 6). That there exist multiple versions of a warrant included in the
22 documentation supporting the extradition, and that there exists a warrant which is omitted
23 from the docket of the certified court records supporting the extradition leads one to question
24 the accuracy and completeness and security of the supporting documents. The nature and
25 quality of these warrant irregularities suggest recent fabrication or manipulation, especially in
26 light of the fact that the signing judge, Judge Wallerstein, passed away years ago.

1 The warrant on extradition and accompanying documents filed in the office of the
2 Secretary of State, specifically the sealed and certified records of the Superior Court of
3 California, County of Riverside, document that the fugitive “Keith Henson” was arrested on
4 felony charges of “Criminal Threats” on July 19, 2000, by the Riverside County Sheriff’s
5 Office. Additionally, a Riverside District Attorney states under oath that “the full name of the
6 person for whom requisition is asked is Keith Henson.”

7 The Riverside County Sheriff acknowledges that the Petitioner in the instant matter
8 has never been arrested by them, and his true and full name is “Howard Keith Henson”.

9 A.R.S. § 13-3845 (B) requires that the executive authority making the demand include
10 a photograph or fingerprint to identify the accused as the fugitive sought. The California
11 Department of Motor Vehicles extract from Petitioner’s 1997 driving license record fails to
12 suffice as there is no nexus between that extract from 1997 and the California criminal
13 matter from 2001, and since it also fails a best evidence test. As the booking record
14 (photograph and fingerprints) from the July 19, 2000 arrest would satisfy both the nexus and
15 the best evidence shortcomings, the omission of those records must be taken as further
16 confirming the admission by the Riverside County Sheriff that Petitioner has never been
17 arrested or booked. An inquiry to obtain the booking record for the arrest documented in the
18 certified court records was denied.

19 The two nearly-identical warrants, as well as another warrant not listed in the certified
20 court records, put to question the reliability and quality of the court record included to support
21 the warrant on extradition.

22 Since Petitioner Howard Keith Henson has never been arrested by the Riverside
23 County Sheriff’s Office, as acknowledged by that agency, and the sealed and certified
24 records of the Riverside County Superior Court document that the fugitive was arrested by
25 the Riverside County Sheriff’s Office on July 19, 2000 on felony charges, the inescapable

1 conclusion is that Howard Keith Henson cannot be the same individual sought by Riverside
2 County authorities.

3 **CONCLUSION**

4 As the trial court failed to permit a reasonable time to apply for habeas relief, and In
5 light of the documentary evidence, which upon review, must lead to the conclusion that this
6 Petitioner cannot be the same individual sought in the Riverside County, California matter,
7 and due to the fact that the several questionable documents have come to light, it is
8 respectfully requested that this Court grant Petitioner a stay to perfect this Special Action,
9 that this Court accept jurisdiction, the Petitioner be granted leave to amend his Petition and
10 supplement the record, and grant Petitioner's requested relief and remand this matter for
11 issuance of the writ of habeas corpus.

12 RESPECTFULLY SUBMITTED this 21th day of May, 2007.

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14 BY: _____
15 Michael Kielsky
16 Attorney for Petitioner
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1 **CERTIFICATE OF COMPLIANCE**

2 I, Michael Kielsky, hereby certify that Petitioner's Petition for Special Action is in
3 compliance with Ariz. R. Crim. P. 31.13(b). The brief uses a proportionately spaced typeface
4 with a 12 point typeface on 8½ by 11 inch paper with one inch margins. The text is double
5 spaced with the exception of quotations, case names and headings. There are a total of
6 2,803 words, 270 lines, 74 paragraphs on 10 pages.

7
8 BY: _____
9 Michael Kielsky
10 Attorney for Petitioner
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