

**IN THE COUNTY COURT OF  
THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY  
STATE OF FLORIDA**

**Case No. 05-2015-CF-025546-AXXX-XX**

**STATE OF FLORIDA**

**Plaintiff,**

**vs.**

**HAROLD F. FRESHWATER,**

**Defendant.**

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**ORDER DENYING  
MOTION TO WITHDRAW WAIVER OF EXTRADITION**

This cause came on to be heard on May 14, 2015 for an Evidentiary Hearing regarding the defendant's motion to withdraw his waiver of extradition. The Court having heard testimony of the defendant, having reviewed the evidence and having heard argument of counsel for the State and the Defense finds as a matter of fact and rules as a matter of law and rules as follows:

On or about May 4, 2015, Mr. Freshwater was arrested in relation to a fugitive warrant which originated in Ohio. The defendant escaped from a detention facility in Ohio in 1959 while serving a sentence for a conviction of voluntary manslaughter. Initial Appearance occurred in Brevard County before Judge Benjamin Garagozlo on May 5, 2015. (The digital recording of these proceedings was entered into evidence at the hearing on this motion).

Although the defendant initially indicated to Judge Garagozlo that he wanted to "fight" extradition, he later announced to the judge that he wanted to waive his right to extradition and affirmed that he had signed a waiver. After the defendant announced his desire to waive extradition, Judge Garagozlo explained the process to the defendant.

David Kennedy, the Public Defender assigned to the courtroom, was not called as a witness for this motion. However, based on the review of the digital recording in evidence, the Court infers that Mr. Freshwater had a consultation with Mr. Kennedy and indicated to Mr. Kennedy his desire to waive extradition.

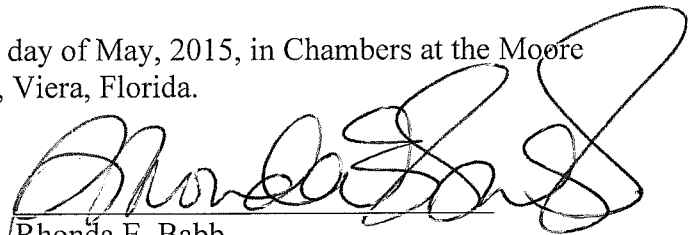
The defendant now seeks to withdraw any waiver of extradition and in support of his motion alleges that he was confused at the initial appearance. He maintains that it was not his intention to waive extradition. Furthermore, the defendant argues that the Court did not provide counsel at the hearing nor was he informed of his right to demand and procure legal counsel.

Based on the testimony and evidence the Court finds that the defendant knowingly and voluntarily waived his right to extradition and was not confused as he now alleges. His final announcement to the judge with certainty was that he wanted to waive extradition and he affirmed that he signed the appropriate waiver. His final statements to Judge Garagozlo indicated that he understood the nature of the proceedings. His testimony about confusion at this hearing was conclusory.

Additionally, the defendant's argument regarding the right to counsel is misapplied. The case law is clear that the defendant did not have the right to counsel at the extradition hearing as he alleges. In *Williams v. State*, 38 So. 3d 188 (Fla. 5<sup>th</sup> DCA 2010), the Court analyzed the defendant's right to counsel in extradition proceedings. The Court held that extradition is not a criminal offense but instead in civil proceeding. The right to counsel only applies in the criminal context. Extradition is not a criminal offense. The purpose of an extradition proceeding is simply to bring suspects to trial in the state where the alleged offense was committed. *State v. Soto*, 423 So.2d 362, 364 (Fla.1982). It is a civil proceeding related to a criminal proceeding in another jurisdiction. Thus, extradition proceedings do not carry the Sixth Amendment right to counsel. See *United States v. Yousef*, 327 F.3d 56, 142 n. 66 (2d Cir.2003); *Chewning v. Rogerson*, 29 F.3d 418, 421 (8th Cir.1994); *Judd v. Vose*, 813 F.2d 494, 497 (1st Cir.1987).

Based on the foregoing, the Court **DENIES** the defendant's motion to withdraw the waiver of extradition.

**DONE and ORDERED** on the 15<sup>th</sup> day of May, 2015, in Chambers at the Moore Justice Center, Brevard County Courthouse, Viera, Florida.



Rhonda E. Babb  
Judge of the County Court

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