U.S. Department of Justice
United States Parole Commission
90 K Street, N.E., 3rd Floor
Washington, D.C. 20530

Notice of Action on Appeal

Name: Lambros, John | Institution: District of Minnesota

Register Number: 00436-124 | Date: February 27, 2018

The National Appeals Board examined the appeal of the above named and ordered the following:

Terminate parole supervision on your original federal sentence in CR3-75-128, 3-76-54, and 3-76-17 and close case.

REASONS:

The National Appeals Board concludes that the Rule of Specialty applies in your case. Consequently your sentence in CR3-75-128, 3-76-54, and 3-76-17 has expired.

All decisions by the National Appeals Board on appeal are final.

cc: Designation & Sentence Computation Ctr
U.S. Armed Forces Reserve Complex
Grand Prairie Office Complex
346 Marine Forces Drive
Grand Prairie, TX 75051

U.S. Probation Office
District of Minnesota
406 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415-1320

Doctrine of Specialty Law and Legal Definition

Doctrine of Specialty is a principle of International law that is included in most extradition treaties, whereby a person who is extradited to a country to stand trial for certain criminal offenses may be tried only for those offenses and not for any other pre-extradition offenses. Once the asylum state extradites an individual to the requesting state under the terms of an extradition treaty, that person can be prosecuted only for crimes specified in the extradition request. This doctrine allows a nation to require the requesting nation to limit prosecution to declared offenses. US courts have been divided on allowing standing to assert the doctrine when the other nation has not explicitly or implicitly protested certain charges.

A person who has been brought within the jurisdiction of the court by virtue of proceedings under an extradition treaty, can only be tried for one of the offences described in that treaty, and for the offence with which he is charged in the proceedings for his extradition, until a reasonable time and opportunity have been given him, after his release or trial upon such charge, to return to the country from whose asylum he had been forcibly taken under those proceedings. [United States v. Rauscher, 119 U.S. 407 (U.S. 1886)]

Legal Definition list

Doctrine of Separate Spheres
Doctrine of Scrivener's Error
Doctrine of Revestment
Doctrine of Relation Back
Doctrine of Preclusion of Inconsistent Positions
Doctrine of Specialty
Doctrine of Substantial Performance
Doctrine of Substituted Judgment
Doctrine of Superior Equities
Doctrine of Tenures
Doctrine of the Last Preceding Antecedent

Related Legal Terms

State v. Pang

940 P.2d 1293 (1997)

132 Wash. 2d 852

STATE of Washington, Respondent, v. Martin Shaw PANG, Petitioner.

No. 64786-1.

Supreme Court of Washington, En Banc.

Argued April 8, 1997.

Decided July 31, 1997.

*1294 Browne & Ressler, John H. Browne, Mark T. Dole, Allen M. Ressler, Seattle, for petitioner.

Norm Maleng, King County Prosecutor, Marilyn B. Brenneman, Timothy A. Bradshaw, Deputies, Seattle, for respondent.

SMITH, Justice.

Petitioner Martin Shaw Pang seeks review of a King County Superior Court decision which denied his motion to dismiss or sever four counts of murder in the first degree from one count of arson in the first degree based upon his claim that the Federal Supreme Court of Brazil approved his extradition from that country for prosecution in the *1295 State of Washington only for the crime of arson in the first degree. We reverse.

QUESTION PRESENTED

The basic question in this case is whether the State of Washington may prosecute Petitioner Martin Shaw Pang for four counts of murder in the first degree and one count of arson in the first degree when the Federal Supreme Court of Brazil, ruling on the

order would allow the maximum punishment of life imprisonment for arson in the first degree as allowed under Washington law. There was no disagreement among the Brazilian justices on the question whether the extradition order would allow prosecution of Petitioner Pang for even a single count of murder in the first or any degree.[52]

We are not convinced an implied waiver, even if made, would overcome the standing of Petitioner Pang to object in this case.[53] The United States Court of Appeals for the Ninth Circuit has held that an express waiver of objection does divest an extraditee of standing.[54] We conclude from the record in this case that Brazil has not expressly consented to nor implicitly or explicitly waived objection to the State of Washington charging Petitioner with murder in the first degree. We therefore conclude that Petitioner Pang does have standing to object.

SPECIALTY DOCTRINE P. 1318

(3) Does the "specialty doctrine" in international extradition law prohibit the State of Washington from prosecuting Petitioner Pang for crimes specifically excluded in the extradition order?

The United States Court of Appeals for the Ninth Circuit has stated "We review de novo whether extradition of a defendant satisfies the doctrines of `dual criminality' and `specialty.'"[55] The specialty doctrine has been explained:

The requested state retains an interest in the fate of a person whom it has extradited, so that if, for example, he is tried for an offense other than the one for which he was extradited, or is given a punishment more severe than the one applicable at the time of the request for extradition, the rights of the requested state, as well as the person, are violated.[[56]]

Under international law, the "specialty doctrine" generally prohibits a requesting State from prosecuting an extraditee "for an offense other than the one for which surrender was made."[57] This doctrine "is designed to prevent prosecution for an offense for *1319 which the person would not have been extradited."[58] P. 1319

"`As a matter of international comity, "[t]he doctrine of `specialty' prohibits the requesting nation from prosecuting the extradited individual for any offense other than that for which the surrendering state agreed to extradite.'"[59] "To guarantee limited prosecution by nations seeking extradition of persons from the United States, the

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United States has guaranteed, pursuant to the treaty, that it will honor limitations placed on prosecution in the United States."[60]

In United States v. Rauscher,[61] the United States Supreme Court addressed the question whether the extradition treaty between England and the United States prohibited prosecution of the defendant for a crime other than that for which he was extradited. This was the first case in which the Supreme Court recognized the specialty doctrine. In that case an American merchant ship officer had been extradited from Great Britain, under an extradition treaty, to be charged with murder of a crew member. He was subsequently convicted of assault and inflicting cruel and unusual punishment, neither of which were listed as extraditable offenses in the treaty. The Court held the defendant could be tried only for the offense "with which he is charged in the extradition proceedings, and for which he was delivered up."[62]

The Court in Rauscher was guided by principles of comity which prevailed in the absence of treaties, under which a receiving country would not prosecute a fugitive for any offense other than those for which the fugitive had been surrendered by the asylum country.[63] The Court rejected the argument that the treaty did not expressly limit the offenses that could be charged by the requesting country.[64] The Court reasoned that there was no indication the treaty intended to depart from principles of comity.[65]

The Supreme Court concluded that the treaty, by listing certain extraditable offenses, implicitly excluded the right of extradition for any other offenses.[66] The Court stated: "[A] person who has been brought within the jurisdiction of the court by virtue of proceedings under an extradition treaty, can only be tried for one of the offences described in that treaty, and for the offence with which he is charged in the proceedings for his extradition."[67] The Court based its conclusion upon the terms and history of the treaty; extradition practices of states; case law; and the writings of jurists. In part, the court considered the Revised Statutes §§ 5272, 5275, which dealt with this country's roles as both requested state and requesting state in extradition proceedings. Section 5275 is now codified in 18 U.S.C. § 3192 and differs only in that the words "crimes or offences" have been replaced with the word "offenses." It provides as follows:

Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any offense of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safekeeping of accused person, and for his security against lawless violence, until the final conclusion of his trial for the offenses specified in

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the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such offenses, and for a reasonable time thereafter, and may employ such portion of *1320 the land or naval forces of the United States, or the militia thereof, as may be necessary for the safe-keeping and protection of the accused.[[68]]

P. 1320,

In United States v. Alvarez-Machain the Supreme Court noted that federal statutes impose the doctrine of specialty upon all extradition treaties to which the United States is a party.[69]

Under Rauscher, for an extradited defendant to be charged with a crime, that crime must be specified in the treaty (the approval of which is within the sole discretion of the asylum state), and be included in the extradition petition (the content of which is within the sole discretion of the requesting state). The defendant has the right to "be tried only for the offence with which he is charged in the extradition proceedings and for which he was delivered up."[70] "It is unreasonable that the country of the asylum should be expected to deliver up such a person to be dealt with by the demanding government without any limitation, implied or otherwise, upon its prosecution of the party."[71] The doctrine of specialty was not explicitly stated in the treaty between the United States and Great Britain. The court in Rauscher interpreted in treaty with consideration of the specialty doctrine which had previously been recognized in international law.[72]

The Court examined the treaty and the history of relations between the United States and Great Britain to determine whether the parties, in the absence of express incorporation, nevertheless intended the doctrine of specialty to be part of the treaty. [73] Under Rauscher the specialty doctrine may be implied where a treaty is silent on the issue and there is no reason to assume the signatory nations did not abide by the principles of comity.

Petitioner Pang argues that, because the extradition order specifically excluded the charges of murder in the first degree requested by the State of Washington, under the specialty doctrine the State may not prosecute him on these charges. He argues that under Rauscher the specialty doctrine is implied in every treaty.[74]

The State argues that any limitations on post-extradition prosecution are defined only by the terms of the treaty and the doctrine of specialty applies only when it is expressly incorporated into the terms of the treaty. In determining whether there has been a violation to the specialty doctrine, courts have consistently examined the terms of the treaty for any limitations on prosecution.[75] The *1321 United States Court of Appeals

P. 1321

for the Ninth Circuit observed in a recent case that "[w]e look to the language of the applicable treaty to determine the protection an extradited person is afforded under the doctrine of specialty."[76]

In this case, the doctrine of specialty is incorporated into the terms of the Treaty of Extradition Between the United States of America and the United States of Brazil (Treaty) through Article XXI which provides:[77]

A person extradited by virtue of the present Treaty may not be tried or punished by the requesting State for any crime or offense committed prior to the request for his extradition, other than that which gave rise to the request, nor may he be re-extradited by the requesting State to a third country which claims him, unless the surrendering State also agrees or unless the person extradited, having been set at liberty within the requesting State, remains voluntarily in the requesting State for more than 30 days from the date on which he was released. Upon such release, he shall be informed of the consequences to which his stay in the territory of the requesting State would subject him.

This provision, read in conjunction with Articles I and II, requires that the crime must be enumerated in the treaty and must satisfy the doctrine of dual criminality, thus incorporating the doctrine of specialty into the Treaty. Because the doctrine is codified in federal statute, 18 U.S.C. § 3192, federal law requires acceptance of the requirement of Brazil that an offense must be extraditable under its interpretation of applicable domestic and international law.

The United States Court of Appeals for the Ninth Circuit recognizes that the doctrine of specialty is embodied in all extradition treaties.[78] That court has recognized Rauscher as providing an "implicit rule of specialty."[79] It has also recognized that, under the doctrine of specialty, an extradited person may be prosecuted only for offenses specified in the order of extradition.[80]

The Federal Supreme Court of Brazil specifically "exclude[d] from the grant of extradition the charges of murder in the first degree."[81] The Court

granted extradition without any restriction as to the possibility of life imprisonment; but only on the crime of first degree arson with the results it produced (four deaths) and all the consequences thereof pursuant to United States law without however, the added charge of four counts of murder in the first-degree.[[82]]

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After considering the appeal for clarification from the United States, the Federal Supreme Court of Brazil unanimously denied it, stating,

P. 1322.

The absence of any doubt or obscurity as regards the denial of the extradition *1322 with respect to the charges of the four crimes of murder in the first degree is demonstrated in the terms of the decision, which did not consider the facts, as described in the request, as characterizing independent crimes of arson in the first degree and murder in the first degree.[[83]]

King County Superior Court Judge Jordan in his oral decision stated, "it appears to this Court reasonably clear that Brazil did not extradite for felony murder."[84] He was absolutely correct in that conclusion. But he was in error in his conclusion that Brazil had "implicitly waived" any objection to the State of Washington ignoring the order on extradition. Under the treaty and the doctrine of specialty, King County may not prosecute Petitioner Pang for any crime but arson in the first degree as specified in the extradition ruling by the Federal Supreme Court of Brazil. "The doctrine of specialty is satisfied if the extraditing country honors the limitations placed on the prosecution by the surrendering state."[85]

EXTRADITION TREATY

(4) Does the Extradition Treaty between the United States of America and the United States of Brazil prohibit the State of Washington from prosecuting Petitioner Pang for crimes not authorized in the extradition order?

International law is incorporated into our domestic law.[86] Treaties are the supreme law of the land. They are binding on the states as well as the federal government.[87] Courts must interpret treaties in good faith.[88] In the 1907 case of Johnson v. Browne[89] the United States Supreme Court stated:

While the escape of criminals is, of course, to be very greatly deprecated, it is still most important that a treaty of this nature between sovereignties should be construed in accordance with the highest good faith, and that it should not be sought, by doubtful construction of some of its provisions, to obtain the extradition of a person for one offense and then punish him for another and different offense. Especially should this be the case where the government surrendering the person has refused to make the surrender for the other offense, on the ground that such offense was not one covered by the treaty.[[90]]

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