

NOT FOR PUBLICATION

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,)
)
 Plaintiff,)
)
 v.)
)
 THIERRY SERRANT,)
)
 Defendant.)
_____)

CASE NO. ST-10-MC-16

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CHRISTIAN, ADAM G., Judge

MEMORANDUM OPINION

(Filed: October 15, 2010)

Before the Court is the “Pctition for Writ of Habeas Corpus Ad Prosequendum” (“Petition”) filed by the People of the Virgin Islands (the “People”). The People seek this writ in order to bring Thierry Serrant to the U.S. Virgin Islands to face several criminal charges set forth in a September 14, 2010 Information.

I. Background.

On August 27, 2010, Mae Wheatley, an investigator with the Virgin Islands Department of Justice, filed an affidavit in support of a petition for the issuance of an arrest warrant for Thierry Serrant. On the same date, the Court issued the requested warrant. On September 15,

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2010, the People filed an Information, dated September 14, 2010, charging Thierry Serrant with nine (9) separate “white-collar crime” charges in violation of 14 V.I.C. §§ 604, 605, 791, 834, 895, and 2202. The People’s Petition recites that Thierry Serrant is the defendant in a pending criminal case in the U.S. Virgin Islands, and presently is in the legal custody of the United States Marshals Service, though he is physically located at the Perry County Prison in Pennsylvania. Also submitted in support of the People’s petition is a copy of a “Waiver of Extradition” wherein Mr. Serrant agrees to his transfer to the Virgin Islands to face the charges referenced above, waives extradition, and exonerates the pertinent law enforcement agents from liability in connection with this transfer.

However, the People’s Petition does not provide any statutory authority for the issuance of the writ. Moreover, no brief is submitted in support of the Petition which provides the statutory or other legal authority upon which the jurisdiction of this Court is invoked. The People also submit a proposed Writ directed to the United States Marshal for the District of the Virgin Islands, though, per their own assertion, Mr. Serrant is in the custody of the United States Marshal for the Middle District of Pennsylvania. Nevertheless, notwithstanding the shortcomings of the People’s Petition, the Court determines that it is appropriate to issue the requested writ.

I. Discussion.

The *writ of habeas corpus ad prosequendum* is one of several types of writs of habeas corpus which are rooted in the English law and have been incorporated into American jurisprudence. 39 Am. Jur. 2d *Habeas Corpus* § 2 (2008). A review of the Virgin Islands Code reveals that there is no specific statutory authority for a Virgin Islands trial court to issue a *writ of habeas corpus ad prosequendum*. Rather, the express power of territorial courts to issue writs

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of habeas corpus pursuant to Section 3 of the Revised Organic Act of the Virgin Islands of 1954, as amended, and Title 5, Chapter 91, Virgin Islands Code, clearly address the *writ of habeas corpus ad subjiciendum* or “the Great Writ”, by which a person who claims that he or she is being illegally held or restrained by the government may challenge such restraint. *See, V.I. Code Ann. tit. 5, § 1301.* The instant request does not fall under this category of habeas writs.

Rather, a *writ of habeas corpus ad prosequendum* is “A writ used in criminal cases to bring before a court a prisoner to be tried on charges other than those for which the prisoner is currently being confined.” *Black’s Law Dictionary* 728 (8th ed. 2004). It is derived from the common law and is used by states for the purpose of ensuring that persons held by legal authority outside of the territorial jurisdiction of the trial court are transferred to face the charges against them. *E.g., State v. Dickerson*, 777 N.W.2d 529 (Minn. Ct. App. 2010); *State v. Branstetter*, 107 S.W.3d 465 (Mo. Ct. App. 2003). Moreover, it serves the purpose of protecting the officer transferring the person who is the subject of the writ from charges of kidnapping. *Jackson v. State*, 264 So.2d 221 (Ala. Crim. App. 1972). A *writ of habeas corpus ad prosequendum* may be, and is, honored by federal officials as a matter of comity between the federal and state governments. *Roesch v. State*, 196 P.3d 795, 798 (Wyo. 2008); *Jackson v. State*, 264 So.2d at 302.

Of course, the Virgin Islands is an unincorporated territory and not a state. *People of the Virgin Islands v. Clark*, Crim. No. ST-09-CR-020, 2010 WL 1923797 (V.I. Super. Ct. May 12, 2010). However, the United States Congress has provided that the relations between the United States courts and those of the Virgin Islands shall mirror those between courts of the United States and those of states in several regards, including matters of habeas corpus. *Revised Organic Act of the Virgin Islands § 23*, 48 U.S.C. § 1613, *reprinted in V.I. Code Ann., Historical*

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Documents, Organic Acts, and U.S. Constitution (1995 and Supp. 2010) (*preceding V.I. Code Ann., Tit. 1*). Thus, federal officials would have the same discretion to accept a *writ of habeas corpus ad prosequendum* issued by this Court as one issued by a state court. Further, trial courts are authorized to direct such writs to authorities outside of their territorial jurisdiction. *E.g., Scott v. People*, 490 P.2d 1295, 1297 (Colo. 1971) (Admittedly, the district attorney has the obligation to obtain the presence of a defendant who is confined outside of his jurisdiction by the use of a writ of habeas corpus ad prosequendum when that procedure is available to him.); *Jackson v. State*, 264 So.2d at 302 (quoting *Carbo v. United States*, 364 U.S. 611, 81 S.Ct. 338, 5 L.Ed.2d 329 (1961)).

Although there is no specific statutory authority for the issuance of a *writ of habeas corpus ad prosequendum* in the Virgin Islands, pursuant to 4 V.I.C. § 324,

“When jurisdiction is by law conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of the proceedings is not specially pointed out by law or by rules of procedure adopted pursuant to law, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the law.”

There is no doubt that this Court has jurisdiction over the criminal charges brought against a person for violations of the criminal codes of the Virgin Islands¹ and that this Court has the same inherent powers as state courts throughout the Nation.² Therefore, it follows based on the afore-cited precedents that this Court has the authority to utilize a process like the *writ of habeas corpus ad prosequendum* to ensure the appearance of a defendant in the Virgin Islands to face charges brought against him in this Court. In addition, because the *writ of habeas corpus ad*

¹ Act No. 5890, § 1, 1993 *V.I. Sess. Laws* 214.

² “The judicial power of the Virgin Islands shall be vested in...such... local courts as may have been or may hereafter be established by local law.” *Revised Organic Act of the Virgin Islands* § 21, 48 U.S.C. § 1611, *reprinted in V.I. Code Ann., Historical Documents, Organic Acts, and U.S. Constitution* (1995 and Supp. 2010) (*preceding V.I. Code Ann., Tit. 1*).

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prosequendum is a common law writ, this Court is guided to issue such writs consistent with “The rules of the common law...as generally understood and applied in the United States.” 1 V.I.C. § 4.

In this matter, probable cause has been found by this Court to arrest Thierry Serrant and charge him with numerous violations of the criminal laws of the Virgin Islands. It also has been established that he is in the legal custody of the United States Marshals Service outside of this jurisdiction. Therefore, under the common law as generally understood in the United States, a *writ of habeas corpus ad prosequendum* is the appropriate process to direct the United States Marshals Service to return Mr. Serrant to the Virgin Islands to face the charges against him. *See, State v. Dickerson*, 777 N.W.2d at 534; *Jackson v. State*, 264 So.2d 301-302.

The People have submitted a proposed *writ of habeas corpus ad prosequendum* which proposes that it be served on the Acting United States Marshal for the District of the Virgin Islands and a Warden of the Virgin Islands Bureau of Corrections. However, neither of these officials currently have custody of Mr. Serrant. Rather, he is in the custody of the United States Marshal for the Middle District of Pennsylvania and the Warden of the Perry County Prison. Therefore, any such writ should be directed to those persons. *Rasul v. Bush*, 542 U.S. 466, 478-479 (2004) (“because ‘the writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody,’ a district court acts ‘within [its] respective jurisdiction’ within the meaning of § 2241 as long as ‘the custodian can be reached by service of process.’”) (citations omitted). In addition, because the common law as generally understood in the United States, which is incorporated in the Virgin Islands pursuant to 1 V.I.C. § 4, provides that a *writ of habeas corpus ad prosequendum* may be served outside of the physical jurisdiction of the issuing court, this writ should be served on the officials

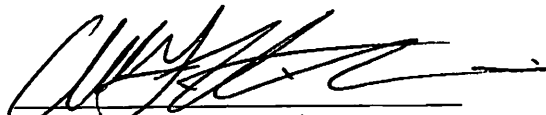
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with the legal and physical custody of Mr. Serrant in accordance with the provisions of 5 V.I.C. § 4911 governing the service of process outside of the Virgin Islands.³

II. Conclusion.

The Court concludes that it has the authority to issue the *writ of habeas corpus ad prosequendum* requested by the People. Because the Court also is satisfied that the circumstances presented in this case warrant the issuance thereof, an appropriate order directing the Clerk of the Court to issue a *writ of habeas corpus ad prosequendum* will be entered.

Dated: October 15, 2010

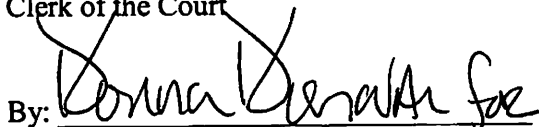


Hon. Adam G. Christian
Judge of the Superior Court
of the Virgin Islands

ATTEST:

Venetia H. Velazquez, Esq.
Clerk of the Court

By:



Estrella George
Court Clerk Supervisor 10 / 15 / 10

³ A *writ of habeas corpus ad prosequendum* is a form of “process”. “‘Process’ and ‘writ’ or ‘writs’ are synonymous, in the sense that every writ is a process...” *Black’s Law Dictionary* 1242 (8th ed. 2004) (quoting 72 C.J.S. *Process* 2 (1987)).