ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-376

DECEMBER TERM, 2018

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	Superior Court, Chittenden Unit,
	}	Criminal Division
Deipo D. Lewin	}	
	}	DOCKET NO. 68-10-18 Cncm
	}	
		Trial Judges: Nancy Waples and David Fenster

In the above-entitled cause, the Clerk will enter:

Appellant Deipo Lewin appeals three orders of the trial court regarding the State's petition to hold appellant as a fugitive from justice. We dismiss the appeal.

On October 31, 2018, the State filed a petition for interstate rendition of a fugitive from justice based on a bench warrant issued out of the State of South Carolina. At that time, appellant was already in the custody of the State of Vermont due to a Vermont criminal proceeding. On November 2, 2018, following a hearing, the court issued a mittimus to detain appellant for thirty days pending the filing of a governor's warrant, and it set bail for $25,000. At the hearing, appellant stated that he did not waive extradition. He argued that he was not a fugitive from justice and requested a hearing to address the issue. The court scheduled a hearing for November 9, 2018.

The State filed a motion objecting to the November 9 hearing. Appellant opposed the motion and argued that the court should dismiss the petition. In a written order on November 9, the court granted the State's motion to cancel the hearing. The court found that the requirements of 13 V.S.A. § 4955 were met, namely, that appellant was "the person charged with having committed the crime alleged and that the person probably committed the crime, and . . . that the person has fled from justice." 13 V.S.A. § 4955. The court ordered a hearing within thirty days of November 2, 2018, to determine whether a governor's warrant had been issued. See id. (authorizing court to "commit the person to jail by a warrant . . . for such a time, not exceeding 30 days, . . . as will enable the arrest of the accused to be made under a warrant of the governor").

At a hearing on November 29, 2018, the State represented that it had not yet received the governor's warrant but expected it within a few days. The State requested to extend appellant's detention an additional forty-five days to allow more time to receive the governor's warrant. See 13 V.S.A. § 4957 ("If the accused is not arrested under warrant of the governor by the expiration of the time specified . . . , such judge may . . . recommit him or her for a further period not to

exceed 60 days . . . ."). The court granted the State's request and set a status conference hearing for January 10, 2019.

Appellant appeals the November 2 order setting bail, the November 9 order canceling the hearing, and the November 29 order extending appellant's detention. Appellant concedes that the court did not err in finding that he is "the person charged with having committed the crime" and that he "probably committed the crime." 13 V.S.A. § 4955. However, he disputes the court's finding that he "fled from justice." Id. He argues that because the court erred in finding that he was a fugitive from justice, the court should not have ordered bail and the petition should be dismissed.

Appellant brings this matter as an appeal of the conditions of his release, which is governed by 13 V.S.A. § 7556. However, he has not brought a challenge to the conditions of his release. Instead, he has brought a challenge to the legality of his detention. We held in Lovejoy v. State that "a petition for writ of habeas corpus is the appropriate manner to challenge the legality of detention under § 4955." 148 Vt. 239, 243 (1987). We explained:

> [A] proceeding under chapter 159 of Title 13, whereby an individual may be detained in this state as a fugitive from justice in another state pending a demand for extradition and issuance of a Governor's warrant thereon[,] . . . is not a criminal prosecution. Rather, it is a unique statutory procedure aimed at implementing the extradition provision of the federal constitution. [The statute] allow[s], upon the required showing, that a person be arrested, and, if the requirements of § 4955 are met, that such person may be committed to jail to await extradition. There is never any charge, trial, or conviction for the "crime" of being a "fugitive from justice."

Id. at 242. We reasoned that because of the "unique statutory procedure" involved, 13 V.S.A. § 7401, did not apply. Id. Section 7401 directs that a "defendant may appeal to the supreme court as of right all questions of law involved in any judgment of conviction." Similarly, 13 V.S.A. § 7556, which permits an accused person to appeal the conditions of release pending criminal proceedings, also does not apply. Instead, the appropriate mechanism to challenge the legality of appellant's detention under § 4955 is a petition for writ of habeas corpus. Lovejoy, 143 Vt. at 243. Such a petition should be brought in the superior court in the first instance. See 12 V.S.A. § 3953 (directing superior court to consider petition for writ of habeas corpus and authorizing appeal to this Court); see also 13 V.S.A. § 4950 (directing challenge to legality of arrest based on governor's warrant to be brought by petition for writ of habeas corpus in superior court).

Nonetheless, appellant urges us to review his challenge as if it were a petition for writ of habeas corpus in the interest of judicial efficiency. For support, he cites State v. Gilman, 155 Vt. 649 (1990) (mem.), and Pfeil v. Rutland Dist. Ct., 147 Vt. 305 (1986). In each of these cases, the appeal was procedurally improper, but the record had been fully developed for our review. See Gilman, 155 Vt. at 649 (relying on fully developed record to determine court did not abuse discretion even though appeal was improvidently granted); Pfeil, 147 Vt. at 308 (treating appeal of decision pursuant to Vermont Rule of Civil Procedure 75 as petition for writ for extraordinary relief based on fully developed record). Thus, we found it appropriate to consider the merits "in

order to conserve judicial resources and avoid an unnecessary duplication of effort." Pfeil, 147 Vt. at 308.

As Pfeil and Gilman demonstrate, there are limited circumstances in which this Court has exercised its discretion to review an appeal, even though improperly labeled, where the record was fully developed. This is not such a case primarily because the record has not been fully developed for our review. Moreover, a direct appeal, no matter how labeled, is simply not the proper avenue for challenging the legality of appellant's detention. To challenge the legality of his detention, appellant must bring a petition for writ of habeas corpus in the trial court.

Dismissed.

FOR THE COURT:

Paul L. Reiber, Chief Justice