

IN THE SUPREME COURT OF THE STATE OF OREGON

MARVIN LEE TAYLOR,

Plaintiff-Appellant,
Respondent on Review,

v.

COLLETTE PETERS, Director,
Oregon Department of Corrections,

Defendant-Respondent,
Petitioner on Review.

Marion County Circuit
Court No. 13C21251

CA A155794

SC S063763

BRIEF ON THE MERITS OF
PETITIONER ON REVIEW, COLLETTE PETERS, DIRECTOR, OREGON
DEPARTMENT OF CORRECTIONS

Review of the Decision of the Court of Appeals
on Appeal from a Judgment
of the Circuit Court for Marion County
Honorable COURTLAND GEYER, Judge

Opinion Filed: October 21, 2015
Author of Opinion: Lagesen, Judge
Before: Duncan, Presiding Judge, and Lagesen, Judge, and Flynn, Judge

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**BRIEF ON THE MERITS OF PETITIONER ON REVIEW,
COLLETTE PETERS, DIRECTOR,
OREGON DEPARTMENT OF CORRECTIONS**

INTRODUCTION

This case is about whether plaintiff, an inmate housed in a Colorado prison pursuant to an interstate agreement, can bring a state habeas corpus action in Oregon to challenge the failure of Colorado prison officials to protect him from other inmates in the Colorado prison. As explained below, there are two independent reasons why plaintiff cannot maintain such a state habeas action.

First, state habeas is a vehicle for prisoners *within Oregon* to challenge their treatment or manner of confinement by Oregon officials and to allege that treatment violates the state or federal constitution. Plaintiff is not within Oregon—he is hundreds of miles away, in a prison over which Oregon officials have no control, and in a state governed by its own constitution as well as federal law. State habeas, by the plain terms of the statute, is not available in such circumstances.

Second, plaintiff has not alleged facts sufficient to support any viable constitutional claim as required for state habeas relief. His treatment by officials in another state does not constitute a violation of the Oregon constitution or a violation by Oregon officials of the federal constitution.

Questions Presented on Appeal**FIRST QUESTION PRESENTED**

ORS 34.310 provides a habeas corpus remedy for inmates incarcerated “within this state.” Under the circumstances presented here, where plaintiff was convicted in Oregon but incarcerated in Colorado pursuant to the Interstate Corrections Compact when he filed his petition, did the trial court properly dismiss his habeas corpus petition because he was not “within this state”?

PROPOSED RULE OF LAW

ORS 34.310 does not authorize an inmate incarcerated in another state to seek habeas corpus relief in Oregon.

SECOND QUESTION PRESENTED

May an inmate who was convicted in Oregon but is incarcerated in Colorado pursuant to the Interstate Corrections Compact obtain state habeas corpus relief against the Director of the Oregon Department of Corrections based on independent conduct of Colorado prison officials?

PROPOSED RULE OF LAW

An inmate who was convicted in Oregon but is incarcerated in Colorado pursuant to the Interstate Corrections Compact may not obtain state habeas corpus relief against the Director of the Oregon Department of Corrections based on independent conduct of Colorado prison officials.

Nature of the Action, Relief Sought, and Trial Court Judgment

Plaintiff filed a habeas corpus petition against defendant, the director of the Oregon Department of Corrections, asserting that conditions of his confinement in Colorado violate his rights under state and federal law. The trial court dismissed plaintiff's petition as meritless. The Court of Appeals reversed the trial court. *Taylor v. Peters*, 274 Or App 477, 361 P3d 54 (2015). This court granted defendant's petition for review.

Statement of Facts

Plaintiff was convicted in Oregon of murder. (ER 5). He is currently housed in the custody of the Colorado Department of Corrections pursuant to the Interstate Corrections Compact (ICC).¹ (ER 1–2). The ICC, too which most states belong, establishes a framework for the interstate transfer of inmates.

In his state habeas petition, he asserted that he was being subjected to dangerous living conditions in the Colorado prison. Those conditions, he alleged, violate his rights under the Eighth and Fifth Amendments to the United

¹ Oregon and Colorado are both signatories to the Western Interstate Corrections Compact (WICC) in addition to the ICC. If the compacts were in conflict, the ICC would control. *See* ORS 421.254. As to the pertinent provisions here, the ICC and WICC are nearly identical. *See* ORS 421.245, ICC Art IV and ORS 421.284, WICC, Art IV. Because the ICC controls, defendant cites to the ICC throughout this brief rather than the WICC even though plaintiff's petition and the Court of Appeals decision refer to the WICC.

States Constitution, Article I, sections 11 and 13, of the Oregon Constitution, and the ICC. (ER 19–20).

In particular, he alleged that he has been targeted by other inmates for years, at least in part, because he previously reported to Oregon prison officials that other inmates were planning a prison escape. (ER 5). Following that report, he was moved around the Oregon prison system and then transferred to the California Department of Corrections where he remained for about ten years. (ER 5–8).

When plaintiff returned to Oregon, he received a disciplinary report for inciting to riot and recruiting sexual activity with another inmate. (ER 8–10). He believed he had been set up by other inmates who were part of a prison gang. (ER 8–10). Plaintiff then assaulted another inmate. (ER 11). He claimed that he had been pressured by a prison gang to atone for his earlier report by assaulting a prison officer and that he instead decided to assault an unpopular inmate. (ER 10–11). After the assault, he was transferred to the Intensive Management Unit. (ER 10–11).

A short time later, plaintiff was transferred to Colorado. (ER 11). He claims that a Colorado prison officer told other inmates that plaintiff was a snitch. (ER 13–14). He alleged that he began receiving death threats and that other inmates threw cheese and “shit bombs” into his cell. (ER 14). Plaintiff alleged that he filed complaints with Colorado prison officials about the prison

officer and went on a hunger strike. (ER 14–15). Plaintiff was then placed in “special controls” and a “strip cell.” (ER 15). After being threatened with force feeding, plaintiff broke his hunger strike. (ER 16). He was transferred to a different unit, and the prison officer who allegedly told other inmates he was a snitch moved to that same unit. (ER 16).

A Colorado prison official said that he was having prison staff listen over the speakers and document any threats plaintiff received. (ER 16). But, according to plaintiff, the mistreatment by other inmates continued. (ER 17). An inmate allegedly threw “a homemade bomb filled with feces under plaintiff’s door.” (ER 17). Prison officials issued a disciplinary report to the other inmate. (ER 17).

Plaintiff was then transferred to a different Colorado prison. (ER 17). He claimed that he was once again targeted by other inmates. (ER 17). He asserted he was singled out by various gangs. (ER 18). He claimed that inmates “banged on cell walls, desks, sinks, stools, vents and doors non-stop to get the staff involved” and have him moved. (ER 17). Once staff moved him, the same thing would happen again. (ER 17). Moreover, he alleged that inmates would “leave feces in the shower” and “throw feces and urine into” his cell. (ER 17). According to plaintiff, Colorado prison officials did nothing to curb the inmates’ conduct toward him. (ER 17).

He also alleged that a Colorado prison case manager disclosed sensitive information about him and his family to other inmates, including information that he had been charged with sodomy as a teenager. (ER 17–18). He claimed that the living conditions he faced were “far more stressful and dangerous than is typical for prison conditions.” (ER 19). Plaintiff alleged that he asked ODOC officials to transfer him out of Colorado, but that they would not do so. (ER 18).

He requested that the court issue a writ of habeas corpus and grant appropriate relief, including ordering his release from custody. (ER 21).

Defendant moved to deny plaintiff’s petition. (Resp to Order to Show Cause & Mtn to Deny Writ). Defendant argued, among other things, that she did not have physical custody of plaintiff and that she did not control the conditions of his confinement in Colorado. (Resp & Mtn 3–5). The trial court granted defendant’s motion and dismissed the petition. (ER 22–24). As noted above, the Court of Appeals reversed.

Summary of Argument

The trial court properly dismissed plaintiff’s petition for state habeas corpus relief. State habeas corpus relief is available to a prisoner within Oregon who has suffered a constitutional violation that requires immediate judicial scrutiny. Plaintiff was not within this state when he initiated his habeas action. For that reason alone the trial court properly dismissed the petition.

Moreover, plaintiff did not allege any viable claim for habeas corpus relief. Plaintiff's statutory claim for a violation of the ICC cannot be the basis for habeas relief. Habeas relief is limited to constitutional claims.

Plaintiff's state constitutional claims against defendant fail because the alleged conduct occurred in Colorado, which is governed by its own state constitution, and is alleged to have been carried out by Colorado officials over whom defendant has no control. Plaintiff's allegations regarding his treatment by Colorado officials in a Colorado prison cannot be the basis for a claim under the Oregon Constitution against an Oregon official.

To the extent that plaintiff's constitutional claims against defendant are rooted in defendant's refusal to grant his request to be transferred to a different prison, he also has not stated a claim for habeas corpus relief. Plaintiff's underlying allegations are that Colorado officials are violating the ICC by failing to protect him from other inmates to the extent the Oregon Constitution would require if he were housed in Oregon. However, Colorado need not afford plaintiff any special treatment. And even if Colorado were required to afford plaintiff more protection and failed to do so that is, at most, a statutory violation. A statutory violation by officials from another state does not support a constitutional claim against defendant. Nothing in the Oregon Constitution requires defendant transfer an inmate who is housed in another state in order to address an alleged statutory violation by officials of that state.

Plaintiff's federal constitutional claims likewise fail because they are directed at conduct of Colorado prison officials and so do not involve state action on the part of defendant.²

ARGUMENT

The trial court properly dismissed plaintiff's habeas corpus petition against defendant, the director of ODOC. A defendant may move to deny issuance of a habeas corpus writ if the petition fails to state a claim for habeas corpus relief. ORS 34.370.³ In deciding such a motion, the court assumes the

² Defendant's arguments largely mirror those in *Barrett v. Peters*, S063743. The only significant difference between defendant's brief in *Barrett* and defendant's brief in this case, is with respect to the federal constitutional claims. In *Barrett*, plaintiff asserted a due process claim based on the lack of pre-transfer notice, which is not cognizable and which plaintiff in this case did not assert.

³ ORS 34.370 provides:

“(1) Except as provided in subsection (6) of this section, the judge to whom the petition for a writ of habeas corpus is presented shall, without delay, issue an order directing the defendant to show cause why the writ should not be allowed.

“(2) Upon the issuance of a show cause order under subsection (1) of this section, the following shall apply:

* * * * *

“(b) The judge shall rule on the show cause order within seven days after either the defendant files a written appearance in opposition or the appearance period expires, whichever comes first. Upon making a ruling, the judge shall do one of the following, as appropriate:

truth of all well-pleaded allegations in the petition and gives plaintiff the benefit of all favorable inferences that may be drawn from those allegations. *Billings v. Gates*, 323 Or 167, 182, 916 P2d 291 (1996). The court also may, on its own motion, dismiss a meritless petition. ORS 34.370(6).

Here, the trial court properly dismissed plaintiff's petition.

A. Because plaintiff is not “within this state,” the trial court correctly dismissed his habeas corpus petition.

There is no dispute that plaintiff is not physically within Oregon. Rather, he is in Colorado, and he was in Colorado when he filed his state habeas petition. Because, as explained below, only people restrained “within this

(...continued)

“(A) If the petition is a meritless petition, issue a judgment denying the petition and ordering the plaintiff to pay the cost of attorney fees incurred by the defendant. In no case shall the award of attorney fees exceed \$100. The fees may be drawn from, or charged against, the inmate's trust account.

* * * * *

“(3) Entry of a judgment under subsection (2)(b)(A) or subsection (6) of this section shall be without prejudice. The judgment shall explain to the parties the reason for the denial.

* * * * *

“(6) The court may, on its own motion, enter a judgment denying a meritless petition brought under ORS 34.310 to 34.730.

“(7) As used in this section, “meritless petition” means one which, when liberally construed, fails to state a claim upon which habeas corpus relief may be granted.”

state” may petition an Oregon state court for habeas corpus, the trial court correctly dismissed his petition.

1. Pursuant to ORS 34.310, only a person confined within Oregon’s geographic boundaries can maintain an Oregon state court habeas corpus action.

State habeas corpus is available to a person “imprisoned or otherwise restrained of liberty, *within this state*.” ORS 34.310⁴ (emphasis added). The statute sets forth jurisdictional requirements for habeas corpus. *See Barrett v. Belleque*, 344 Or 91, 176 P3d 1272 (2008) (recognizing that ORS 34.310 is part of the “habeas jurisdictional analysis”).

The text of ORS 34.310 indicates that “within this state” means physically within the geographic boundaries of the state. *See State v. Gaines*, 346 Or 160, 171, 206 P3d 1042 (2009) (“[T]here is no more persuasive evidence of the intent of the legislature than the words by which the legislature

⁴ ORS 34.310 provides:

“The writ of habeas corpus ad subjiciendum is the writ designated in ORS 34.310 to 34.730, and every other writ of habeas corpus is abolished. Every person imprisoned or otherwise restrained of liberty, within this state, except in the cases specified in ORS 34.330, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint, and if illegal, to be delivered therefrom.”

The exception in ORS 34.330 identifies specific circumstances under which habeas is not available—for example, when the person is imprisoned by the federal government.

undertook to give expression to its wishes”). ORS 34.310 was part of the original Oregon Revised Statutes adopted in 1862, and the “within this state” requirement for habeas corpus was in the Deady Code that preceded those statutes. General Laws of Oregon, Civ Code, ch VII, title III, § 597, p 300 (Deady 1845–1864).⁵ When the legislature enacted the Deady Code, it would have understood “within this state” to mean inside of the geographic state boundary. “Within” was defined in Noah Webster’s contemporaneous dictionary as: “In the inner part; as the space *within* the walls of a house” and as “[i]n the limits or compass of; not beyond; used of place and time.” Noah Webster, 2 *An American Dictionary of the English Language*, 114 (1828).

The context of the original statute and current habeas statutes also supports that “within” refers to inside a geographic boundary. In particular, the Deady Code and the subsequent habeas statutes provided that jurisdiction for a

⁵ The Deady Code was very similar to current ORS 34.310, providing:

“The writ of habeas corpus ad subjicendum is the writ herein designated, and every other writ of habeas corpus is abolished. Every person imprisoned or otherwise restrained of his liberty, within this state, under any pretense whatsoever, except in the cases specified in the next section, may prosecute a writ of habeas corpus according to the provisions of this title, to inquire into the cause of such imprisonment or restraint, and if illegal, to be delivered therefrom.”

General Laws of Oregon, Civ Code, ch VII, title III, § 597, p 300 (Deady 1845–1864).

habeas corpus action is in the “circuit court for the judicial district wherein the party is imprisoned or restrained.” General Laws of Oregon, Civ Code, ch VII, title III § 638, p 310 (Deady 1845–1864); ORS 34.320. And both the Deady Code and revised statutes provide for a specific procedure that allows any judge who is authorized to issue a writ of habeas corpus to do so when it appears the person is being illegally restrained and “there is good reason to believe that he will be carried out of the state.” General Laws of Oregon, Civ Code, ch VII, title III § 625, p 307 (Deady 1845–1864); ORS 34.380. The geographic references in those provisions demonstrate that the legislature believed it was authorizing habeas corpus actions only for a person who is restrained within the geographic boundary of the state.

This court has previously recognized that the “logical inference from” the habeas statutes discussed above “is that the kind of restraint to which reference is made is physical restraint within the state of Oregon and within some county or judicial district of the state.” *White v. Gladden*, 209 Or 53, 60, 303 P2d 226 (1956). That construction supports defendant’s position in this case. Because plaintiff is not incarcerated in Oregon, he cannot maintain a state habeas action.

2. That plaintiff was transferred out of state does not compel a different result.

Plaintiff, relying on *Barrett v. Belleque*, 344 Or 91, asserts that because defendant transferred him to Colorado pursuant to the ICC, he can maintain a

state habeas action against defendant while out-of-state. (See App Br 13–20; ER 2–4). But *Barrett v. Belleque* does not support plaintiff’s argument.

In that case, plaintiff, while housed in an ODOC institution, was moved to the Intensive Management Unit (IMU) for fighting and gang activity. 344 Or at 93. He filed a state habeas petition challenging his placement in IMU without a pre-placement hearing. *Id.* The trial court dismissed his petition. *Id.* While plaintiff’s appeal from that dismissal was pending, ODOC transferred him to an Oklahoma prison pursuant to the ICC. *Id.* This court concluded that plaintiff’s appeal of his habeas petition was not moot even though he had been transferred out of state. *Id.* at 99–101.

This court explained that the habeas action was not moot because plaintiff had produced evidence that Oregon prison officials were advising Oklahoma prison officials to place plaintiff in its maximum-security housing unit and that Oklahoma would not move plaintiff to medium-security without Oregon’s approval. *Id.* at 99. The court further explained that the “terms of the ICC supplement the ordinary habeas jurisdictional analysis” and that, in light of the evidence that Oregon officials were determining plaintiff’s status in the Oklahoma prison, the court could not conclude the dispute was moot. *Id.* at 100.

Barrett v. Belleque ultimately stands for two unremarkable and well-settled principles of law, neither of which is at issue here. First, jurisdiction

under the habeas statute is determined by the facts that existed at the time the petition was filed. This court held over fifty years ago that transfer of a habeas plaintiff during the pendency of appeal does not divest the court of the jurisdiction that attached at the filing of the petition. *See Anderson v. Britton*, 212 Or 1, 5, 318 P2d 291 (1957), *cert den*, 356 US 962 (1958), *superseded by statute on other grounds as stated in Delaney v. Gladden*, 232 Or 306, 308, 374 P2d 746 (1962) (“the function of habeas corpus cannot be defeated by a transfer of custody after a ruling in the trial court and pending appeal to this court”); *see also McGee v. Johnson*, 161 Or App 384, 984 P2d 341 (1999) (then-Judge Landau explaining that jurisdiction over a habeas corpus petition “cannot be divested merely upon a change in the physical location of a plaintiff”). *Barrett v. Belleque* stands for the same proposition as those older cases—transfer of an inmate outside of Oregon *after* he or she filed a habeas corpus petition does not divest the Oregon courts of jurisdiction over a petition filed when the inmate was within the state.⁶ That holding simply has no bearing on this situation, where plaintiff was not within the state at the time of filing.

Second, a case that otherwise falls within a court’s jurisdiction should be dismissed as moot only if the court’s decision will have no practical effect on

⁶ Federal law is consistent with that approach. Federal courts determine jurisdiction for habeas corpus petitions at the time of filing and transfer of the inmate does not divest the court of jurisdiction. *Francis v. Rison*, 894 F2d 353, 354 (9th Cir 1990).

the parties' rights. *See, e.g., Brumnett v. PSRB*, 315 Or 402, 406, 848 P2d 1194 (1993). In *Barrett v. Belleque*, the court explained that notwithstanding plaintiff's transfer to Oklahoma, its decision would have a practical effect because there was evidence (at least for purposes of a motion to deny) that defendant had direct control over whether plaintiff was classified as a maximum-security prisoner in Oklahoma. 344 Or at 100. Here, where the issue is not mootness, the question of whether the court's decision would have any practical effect is not germane.

Moreover, the type of direct control that this court found significant in *Barrett v. Belleque* is not present here. Nothing suggests that defendant is controlling the conditions plaintiff challenges—the Colorado officials alleged failure to protect him from other inmates. On the contrary, as the terms of the ICC demonstrate, defendant has no control over those conditions.

The ICC establishes a framework under which issues related to sentencing and release are controlled by the sending state. *See* ORS 421.245, ICC Art IV § 3, 4, 6, 8 (sending state maintains “jurisdiction” over an inmate and the sending state's laws and regulations control with respect to conviction-related issues including parole hearings and release of an inmate). The receiving state controls day-to-day conditions of confinement, including discipline. *See* ORS 421.245, ICC Art IV, § 5 (sending state will treat inmate transferred pursuant to ICC in “reasonable and humane manner” and “equally

with” other inmates); *Daye v. State*, 769 A 2d 630 (Vt 2000) (“courts have uniformly rejected claims that transferred prisoners are entitled to the same disciplinary, classification, visitation, and grooming policies of the sending state”); *Glick v. Holden*, 889 P2d 1389, 1393 (Ut Ct App 1995) (“A common sense reading of these provisions must allow authorities having daily physical custody of a transferred inmate to determine discipline, visitation, classification, and grooming aspects of the inmate’s incarceration.”).

Because defendant does not control the conditions about which plaintiff complains there is no basis to extend habeas jurisdiction to reach those conditions in the Colorado prison.

In sum, because plaintiff cannot bring a habeas action in Oregon while confined out-of-state to challenge conditions not within defendant’s control, the trial court properly dismissed his habeas corpus petition.

B. The trial court properly dismissed plaintiff’s petition because he did not allege any claim cognizable in state habeas.

To state a claim for habeas corpus, a plaintiff must plead “facts in support of a claim that the person is deprived of a constitutional right that requires immediate judicial attention and for which no other timely remedy is practicably available to the plaintiff.” ORS 34.362. Here plaintiff failed to plead facts to establish that he had any viable claim against defendant that could be pursued in a state habeas proceeding.

1. Plaintiff's statutory claim is not a basis for habeas corpus relief.

Plaintiff asserted that defendant violated the ICC. (ER 20). But a habeas corpus proceeding may only address constitutional claims. As noted above, the habeas statute provides that a plaintiff must allege facts to support a claim that the person was denied a "constitutional right." ORS 34.362. Accordingly, a violation of the ICC provides no basis for habeas corpus relief.⁷

2. Plaintiff alleged no constitutional claim against defendant that could be a basis for habeas corpus relief.

Plaintiff also asserted that defendant violated his Oregon constitutional right to be free from unnecessary rigor and his right to a remedy by due course of law, and that she violated his federal rights to be free of cruel and unusual punishment and to due process. None of those allegations provides a viable basis for habeas corpus relief on the facts pleaded here.

⁷ Defendant acknowledges that she did not make this precise argument to the trial court, but she generally asserted that plaintiff had failed to state a claim for habeas corpus. (See ER 22). Because the issue of whether violation of a statutory right can be the basis for habeas corpus relief is purely legal, this court should reach it as an alternative basis to affirm the trial court's dismissal of the statutory claim in plaintiff's petition. See *Williams v. Philip Morris Inc.*, 344 Or 45, 57, 176 P3d 1255 (2008) (appellate court may affirm on an alternative basis when issue is purely legal).

a. Plaintiff alleged no viable Oregon constitutional claim against defendant.

Plaintiff framed his state constitutional claims in terms of Oregon prison officials refusing to remove him from Colorado in light of the dangerous and unnecessarily harsh conditions there. (ER 19–20). But those are allegations based on the conditions his confinement in Colorado. And the Oregon Constitution has no direct application in Colorado.

The Oregon Bill of Rights protects citizens from *Oregon* state action. *See State v. Tucker*, 330 Or 85, 89, 997 P2d 782 (2000) (“Article I, section 9, prohibits only state action that infringes on a citizen’s constitutional rights.”); *State ex rel Juvenile Dep’t of Washington Cty v. Deford*, 177 Or App 555, 567, 34 P3d 673 (2001) (“Article I, section 12, like the other sections of the Oregon Constitution’s Bill of Rights, protects citizens from state action.”). Here, the alleged Colorado prison conditions are not the result of Oregon state action. Moreover, plaintiff has no right under the Oregon Constitution to particular conditions while he is in Colorado. And because plaintiff’s state constitutional rights are not being violated by Colorado in Colorado, defendant’s failure to transfer him likewise is not of constitutional dimension.

Plaintiff has a *statutory* right under the ICC to be treated in a reasonable and humane manner consistent with how Colorado treats its own inmates, but that right does not incorporate Oregon constitutional rights. Specifically,

Oregon and Colorado signed on to section 5 of the ICC. That section begins: “All inmates who may have been confined in an institution pursuant to the [ICC] shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution.” ORS 421.245, ICC Art IV, § 5. It goes on to also provide that, “[t]he fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.” ORS 421.245, ICC Art IV, § 5.

The Court of Appeals relied on its decision in *Barrett v. Peters*, 274 Or App 237, 360 P3d 638 (2015), to conclude that plaintiff had the right to be incarcerated under the same conditions that he would have been entitled to in Oregon. *Taylor*, 274 Or App at 480, 483. In *Barrett*, that court focused solely on the second sentence of section 5, in concluding that plaintiff retained his Oregon constitutional rights in the receiving state, even if those Oregon rights are different from the rights that other inmates confined in the receiving state have. *Barrett*, 274 Or App 237. But that expansive reading of the second sentence conflicts with the first sentence, which requires that plaintiff be treated equally with the receiving state’s own inmates. The section has to be read as a whole, not each sentence in isolation. *See Gaines*, 346 Or at 171 (statutory text is construed in context); ORS 174.010 (statute with several particulars should

be construed, if possible, to “give effect to all”). And when read as a whole, the two sentences can be harmonized: The first sentence governs conditions of confinement in the receiving state, and the second governs other rights related to the conviction that the inmate may have—for example, rights related to the length of the sentence, good-time credit, and parole. Thus, plaintiff’s conditions of confinement are governed by Colorado law, which must ensure at a minimum that he is treated reasonably and humanely. Oregon law does not supplant or supplement those requirements. But for other matters, such as sentence calculation and parole eligibility, Oregon rather than Colorado law applies.

That construction is consistent with other provisions of the ICC and the framework of the ICC, as well as the way the compact has been interpreted by other courts. Pursuant to the ICC, the sending state maintains “jurisdiction” over an inmate and the sending state’s laws and regulations control with respect to conviction-related issues including parole hearings and release of an inmate. *See* ORS 421.245, ICC Art IV § 3, 4, 6, 8. Conditions of confinement, on the other hand, are the responsibility of the receiving state. *See e.g., Stewart v. McManus*, 924 F2d 138 (8th Cir 1991) (ICC does not require receiving state to apply sending state’s disciplinary rules or procedures); *Daye*, 769 A 2d 630 (transferred prisoner not entitled to disciplinary and grooming policies of sending state); *Glick*, 889 P2d at 1393 (same). Because the ICC precludes the

sending state from treating an ICC-inmate differently from other inmates, plaintiff has no Oregon constitutional right to any additional protection that would require he receive special treatment while in Colorado.

In any event, even if the Court of Appeals' reading of the ICC were correct—which as explained above it is not—plaintiff still would not have stated a claim for habeas relief. That is because any right he may have had in Colorado to be treated in accordance with Oregon constitutional principles would be a *statutory* right under the ICC, not a right directly under the Oregon Constitution. And because Colorado's failure to afford plaintiff the legal rights he might have under the ICC would not be a *constitutional* violation, it would not be cognizable in habeas.

In sum, plaintiff's allegations do not state a claim against defendant for violating the Oregon Constitution. His underlying allegations are that Colorado officials are violating the ICC by failing to afford him the protections to which he claims he *would* be entitled *if* he were a prisoner in Oregon. But the ICC, as correctly construed, does not require Colorado to afford plaintiff special treatment in order to provide the same conditions to which he would be entitled to in Oregon. And even if the ICC did require Colorado to provide such special treatment, Colorado's alleged failure to do so would not support a state habeas claim against defendant. To the extent the ICC required Colorado to provide special treatment to plaintiff, its failure to do so is at most a statutory violation

and would not support an Oregon constitutional claim against defendant for failing to remove him.

b. Plaintiff alleged no viable federal constitutional claim against defendant.

Plaintiff's federal constitutional claims against defendant, for violation of his right to be free of cruel and unusual punishment and to due process, fail because they involve no action by defendant. Like the state constitutional provisions discussed above, the federal provisions protect an individual from state action. *See* US Const, Amend XIV ("nor shall any *State* deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws") (emphasis added); *Cooper Indus. v. Leatherman Tool Group*, 532 US 424, 433–34, 121 S Ct 1678, 149 L Ed 2d 674 (2001) (the Due Process Clause "imposes substantive limits" on sentencing and "makes the Eighth Amendment's prohibition against" "cruel and unusual punishments applicable to the States"). Here, if there has been a violation of plaintiff's federal constitutional rights based on Colorado's alleged failure to protect him from other inmates, it was due to Colorado's action, not Oregon's. It follows that plaintiff has no federal constitutional claim against defendant and the trial court properly dismissed his petition.

Plaintiff also has advanced no good reason why, as a practical matter, his federal constitutional claims about his conditions of confinement should be heard in the Oregon courts. The Colorado prison officials who he alleges are violating his rights are bound by the federal constitution just as much as defendant is. If his current conditions of confinement in fact violate the federal constitution (or, for that matter, a federal statute), he presumably can seek relief in a federal or state court in Colorado against the state actors who are directly responsible for those conditions. The witnesses and physical evidence relevant to a conditions-of-confinement claim are all in Colorado. Allowing the claims to be brought in Oregon—hundreds of miles from the location of the alleged constitutional violation—and against a defendant who has no direct control over or knowledge of the conditions will raise a host of problems for the trial court in managing the litigation. These practical considerations counsel in favor of ruling that plaintiff has not stated a viable claim under the federal constitution against defendant when defendant is not responsible for the conditions of confinement in Colorado.

CONCLUSION

This court should reverse the decision of the Court of Appeals and affirm the trial court's judgment dismissing plaintiff's petition for habeas corpus relief.

Respectfully submitted,

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NOTICE OF FILING AND PROOF OF SERVICE

I certify that on March 14, 2016, I directed the original Brief on the Merits of Petitioner on Review, Collette Peters, Director, Oregon Department of Corrections, to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Jed Peterson, attorney for appellant, by using the court's electronic filing system.

CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 5,536 words. I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(2)(b).

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