

Original,
No. 5389.

GENE LLOYD HERBERT

v.

NEW HAMPSHIRE STATE PAROLE BOARD.

Submitted June 21, 1965.

Decided July 21, 1965.

Gene Lloyd Herbert, pro se.

William Maynard, Attorney General and William J. O'Neil, Assistant Attorney General, for the defendant.

KENISON, C. J. Petition for a writ of habeas corpus requesting that the New Hampshire Board of Parole be ordered to withdraw their violation of parole warrant which has been lodged as a detainer against the plaintiff. The plaintiff is an inmate at the United States Penitentiary, Lewisburg, Pennsylvania, serving a sentence for interstate transportation of a stolen motor vehicle. While a parolee in the state he was held in the Strafford county jail for breaking and entering in the nighttime in March 1963. While awaiting trial he broke jail, fled to Texas in a stolen automobile in August 1963 and was sentenced on October 21, 1963 in the United States District Court of Northern Texas to three years in a federal institution.

The plaintiff contends that the defendant and the State of New Hampshire have "waived their rights and all jurisdiction over petitioner" because he was prosecuted for a federal offense. The contention is without merit. An examination of the records discloses that at no time has the defendant or the State of New Hampshire waived its violation of parole warrant or the right to complete its prosecution of the breaking and entering charges

against the plaintiff. *State v. Bugely*, 103 N. H. 376; RSA ch. 606-A (supp); Laws 1959, c. 107. The plaintiff cannot break jail, violate his unexpired parole, flee the jurisdiction to avoid prosecution for offenses committed in this state and twist this activity into a waiver of jurisdiction by this state.

Petition dismissed.

All concurred.

Request of Governor and Council,
No. 5401.

OPINION OF THE JUSTICES.

Submitted August 26, 1965.

Answer returned September 21, 1965.

The Governor and Council assembled in executive session August 17, 1965 adopted the resolution appended hereto as appendix A relative to the enactment of House Bill 282 which now appears as chapter 378 of the Laws of 1965. The resolution was filed in this court August 17, 1965.

The following answer was returned:

To his Excellency the Governor and the Honorable Council:

The Justices of the Supreme Court make the following reply to the request for advice contained in your resolution appended