

No. 30928

In the
Missouri Court of Appeals
Southern District

STATE OF MISSOURI,

Appellant,

v.

DARRELL G. DELONG,

Respondent.

Appeal from Lawrence County Circuit Court
The Honorable Larry W. Meyer, Associate Circuit Judge

APPELLANT'S BRIEF
ORAL ARGUMENT REQUESTED

CHRIS KOSTER
Attorney General

KAREN L. KRAMER
Assistant Attorney General
Missouri Bar No. 49700

P.O. Box 899
Jefferson City, MO 65102
(573) 751-3321
(573) 751-5391 fax
karen.kramer@ago.mo.gov
ATTORNEYS FOR APPELLANT

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JURISDICTIONAL STATEMENT

This case is an appeal from the Lawrence County associate court's order and judgment dismissing, with prejudice, all of the state's charges in Case No. 09LW-CR00950 (leaving the scene of a motor vehicle accident; tampering with a motor vehicle, and resisting arrest); Case No. 09LW-CR00952 (misdemeanor driving while revoked); and Case No. 091LW-CR01053 (first degree burglary, stealing, and receiving stolen property). The charges in all three cases were dismissed with prejudice via a single order and judgment issued by the Associate Circuit Court of Lawrence County, which found that the state had failed to bring the cases to trial within 180 days of respondent's request for disposition of detainer filed on April 23, 2010. This appeal does not involve any of the categories reserved for the exclusive appellate jurisdiction of the Supreme Court of Missouri. Therefore, jurisdiction lies in the Missouri Court of Appeals, Southern District. Article V, §3, Missouri Constitution (as amended 1982).

STATEMENT OF FACTS

Respondent, Darrell G. Delong, was charged in Lawrence County in three separate cases. On May 29, 2009, he was charged by complaint in Case No. 09LW-CR00950 with leaving the scene of an accident, first degree tampering with a motor vehicle, and felony resisting arrest (LF 1, 6-7). On May 29, 2009, respondent was charged via amended information in 09LW-CR00952 with driving while revoked, careless and imprudent driving, driving without proof of financial responsibility, three counts of failure to stop at a stop sign, and possession of a license plate issued to another (LF 77-79). On June 15, 2009, respondent was charged by complaint with first degree burglary, stealing, and two counts of receiving stolen property (Tr. 103, 107-108).

At some point in August, 2009, respondent was taken into custody in Oklahoma on Oklahoma charges (LF 26). On September 17, 2009, respondent filed a *pro se* motion for speedy trial in Case Nos. CR00950 and CR01053 (LF 3, 105) (LF 29, 122). In that motion, respondent alleged that he was taken into custody in Custer County [Oklahoma] and had been sentenced on those charges (LF 29, 122). Respondent said that he would be substantially prejudiced by the delay in bringing him to trial on the charges in 09LW-CR01053 and 09LW-CR00950 (LF 30, 123). Respondent asked that a writ be issued for his delivery to the Lawrence County Jail or that the charges be dismissed for unnecessary delay (LF 30).

On April 23, 2010, counsel filed a document entitled "Request for Disposition of Detainer Pursuant to Section 217.450, RSMo" (LF 4). Counsel alleged that appellant was charged by complaint in 09LW-CR00950 with burglary, stealing, and receiving stolen

property and was currently incarcerated in the Oklahoma Department of Corrections, and sought disposition of the above charges (LF 33). Counsel's motion purported to relate back to and incorporate respondent's *pro se* motion filed in September, 2009 (LF 33). Counsel filed a similar request in Case No. 09LW-CR00952 and Case No. 09LW-CR0-1053 (LF 63, 84-85, 105, 1227-128). Counsel also filed a request for speedy trial as to Case No. 09LW-CR00952, asserting that respondent had been seeking transfer to Lawrence County, that he was currently incarcerated in Oklahoma, that the state was "obligated" to seek extradition of respondent (LF 86).

On April 26, 2010, the Lawrence County Prosecutor placed a detainer on respondent as to Case Nos. CR01053 and 00950 (LF 35, 88, 129).

On September 16, 2010, respondent appeared before the Lawrence County Associate Circuit Court for a preliminary hearing (LF 4, 105). The court overruled respondent's motion to dismiss and held the preliminary hearing under advisement for additional evidence (LF 4, 106).

Respondent filed a motion to reconsider (LF 4, 106, 131). In that motion, respondent alleged that the state argued that respondent had failed to substantially comply with the Interstate Agreement on Detainers because he had not provided a formal certificate stating the terms of respondent's commitment in Oklahoma and thus failed to trigger the 180-day time limit (LF 37-38). Respondent argued that he had substantially complied with the incarceration notice requirement of the IAD (LF 38-39). Respondent argued that a formal certification of incarceration from Oklahoma was not necessary because the prosecutor knew of respondent's incarceration status in any event (LF 39).

A hearing was held, and the cause was taken under advisement (LF 4, 106). On October 21, 2010, the associate circuit court issued an order and judgment dismissing respondent's cases with prejudice (LF 5). The court found that the prosecutor's letter of April 26, 2010 operated as a formal detainer in respondent's cases (LF 49, 92, 143). The court found that "[a]pparently by operation of the detainer placed on Defendant pursuant to the Prosecutor's letter of April 26, 2010, Defendant was held by Oklahoma authorities upon his parole from Oklahoma DOC to await transfer to Lawrence County, Missouri authorities." (LF 49, 92, 143).

The court found that respondent's formal requests filed on April 23, 2010, triggered the 180-day time limit for him to be brought to trial on the Missouri charges (LF 49, 92, 143). The failure of the respondent to provide a formal certificate from the warden of the Oklahoma Correctional facility was of no account as it did not prevent Lawrence County from placing a hold on respondent and bringing him back to Lawrence County (LF 50, 93, 144).

Ultimately, the court found that the prosecutor had until October 20, 2010, (the 180th day from the filing of respondent's formal requests for Disposition of Detainer on April 23, 2010) to bring the charges to trial (LF 50, 93, 144). The state missed that date, and thus the court dismissed the state's charges with prejudice, pursuant to §217. 490, RSMo, in all three of appellant's cases (LF 50, 64, 93, 144). The state now appeals from the associate circuit court's ruling.

POINT RELIED ON

The associate circuit court clearly erred in dismissing respondent's cases because the state had not violated the terms of the Interstate Agreement on Detainers (IAD) by failing to bring respondent's cases to trial within 180 days of respondent's request under the IAD in that respondent was not entitled to the protections of the IAD because no detainer had been filed against respondent at the time he made his purported request under the IAD.

Burnes v. State, 92 S.W.3d 342 (Mo.App.S.D. 2003)

State v. Howell, 818 S.W.2d 681 (Mo.App.W.D. 1991)

State v. Hicks, 719 S.W.2d 86 (Mo.App.S.D. 1986)

U.S. v. Mauro, 436 U.S. 340, 343, 98 S.Ct. 1834, 56 L.Ed.2d 329 (1978)

Interstate Agreement on Detainers, §217.490, RSMo 2000

ARGUMENT

The associate circuit court erred in dismissing respondent's cases because the state had not violated the terms of the Interstate Agreement on Detainers (IAD) by failing to bring respondent's cases to trial within 180 days of respondent's request under the IAD in that respondent was not entitled to the protections of the IAD because no detainer had been filed against respondent at the time he made his purported request under the IAD and thus respondent was not entitled to the IAD's protections.

On April 23, 2010, counsel for respondent filed documents entitled "Request for Disposition of Detainer Pursuant to Section 217.450, RSMo" (LF 4), in all three of respondent's then-pending cases in Lawrence County (LF 4, 33, 63, 84-85, 105, 127-128). Counsel alleged that appellant was charged in the various cases, was currently incarcerated in the Oklahoma Department of Corrections, and sought disposition of the charges (LF 33). But counsel's motions were insufficient to invoke the protections of the IAD, inasmuch as counsel did not establish that Lawrence County had filed a detainer against respondent as to any of the charges, and in fact, the record shows that Lawrence County did not file a detainer until after counsel filed the requests for disposition.

A. Standard of review.

Whether the trial court properly interpreted and applied the IAD to the facts is a question of law which this Court reviews *de novo*. *State v. Woods*, 259 S.W.3d 552, 555 (Mo.App.S.D. 2008). To the extent the trial court's application of the law was based upon the evidence presented, this Court defers to the trial court's factual findings and credibility determinations. *Id.*

B. Analysis.

The Interstate Agreement on Detainers (IAD) is an interstate compact that creates uniform procedures for lodging and executing detainers. Detainers are legal orders requiring a state where a person is imprisoned to hold the individual when he has finished serving his sentence so that he may be tried on outstanding charges in a different state. *Alabama v. Bozeman*, 533 U.S. 146, 148, 121 S.Ct. 2079, 150 L.Ed.2d 188 (2001). The provisions of the IAD are triggered when a detainer is filed with the sending state (where the person is incarcerated) by the receiving state (where there are untried charges). *U.S. v. Mauro*, 436 U.S. 340, 343, 98 S.Ct. 1834, 56 L.Ed.2d 329 (1978). Once a detainer is lodged, the inmate may file a request for disposition of the untried charges. ' 217.490, Article II.1. After the request has been properly served, officials in the receiving state must bring the defendant to trial within 180 days or the charges must be dismissed. *Id.* The IAD is to be construed in harmony with the Uniform Mandatory Disposition of Detainers Act (UMDDL), §217.450-217.485. *State v. Smith*, 686 S.W.2d 543, 547 (Mo.App.S.D. 1985).

A detainer is a request filed by a criminal justice agency with the institution in which the prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent. *Carchman v. Nash*, 473 U.S. 716, 719, 105 S.Ct. 3401, 87 L.Ed.2d 516 (1985). A prisoner in a sending state cannot “request” disposition of a detainer and pending charges, and so invoke the IAD limitations, where no detainer exists. *State v. Howell*, 818 S.W.2d 681, 683, n.1 (Mo.App.W.D. 1991). In the present case, respondent did not indicate that a detainer had ever been filed against him in any of the cases. In fact, the record shows that on April 26, 2010, the Lawrence

County Prosecutor placed a detainer on respondent, *after* respondent's requests under the IAD (LF 35, 88, 129), thereby demonstrating that there was no detainer on respondent at the time he made his request. In fact, respondent pled in his motion to reconsider that the State of Missouri "never made attempt to acquire Defendant and bring him to Lawrence County, Missouri, for prosecution of the above charges" (LF 37), further demonstrating that no detainer had ever been filed. Respondent further pled that Lawrence County, Missouri had informed the Custer County, Oklahoma authorities that they "would not be coming to get Defendant on its warrants." (LF 39). In short, Lawrence County had not lodged a detainer against respondent prior to respondent's filing of a request to dispose of the non-existent detainers.

The associate circuit court itself recognized this, noting in its order and judgment that the prosecutor's letter of April 26, 2010, operated as a formal detainer in respondent's cases (LF 49, 92, 143). The court further found that "[a]pparently by operation of the detainer placed on Defendant pursuant to the Prosecutor's letter of April 26, 2010, Defendant was held by Oklahoma authorities upon his parole from Oklahoma DOC to await transfer to Lawrence County, Missouri authorities." (LF 49, 92, 143).¹

¹Appellant notes that the associate circuit court's language merely assumes that Oklahoma authorities held respondent for the Lawrence County authorities. Appellant was arrested on Lawrence County's warrant in Lawrence County on August 23, 2010 (LF 90). There is no evidence as to how he arrived in Lawrence County, Missouri, and there is reason to believe that he may have been released from the Oklahoma Department of Corrections on

The court further found that respondent's formal requests filed on April 23, 2010, triggered the 180-day time limit for him to be brought to trial on the Missouri charges (LF 49, 92, 143). But this finding was clearly erroneous because there were no detainers filed by Lawrence County against appellant as of that date. Since no detainer existed, respondent could not invoke the IAD. *See State v. Howell, supra.*

It was only after the detainers were placed on April 26, 2010, that respondent could have invoked the IAD. The detainer filed by Lawrence County cannot "relate back" to the prior IAD requests and validate them. For example, in *State v. Hicks*, 719 S.W.2d 86

August 13, 2010, according to the Oklahoma Department of Corrections website. If respondent was discharged from his sentence in Oklahoma, he would not have been entitled to the protections of the IAD in October, 2010. *See, e.g., Dillard v. State*, 931 S.W.2d 157, 166 (Mo.App.W.D. 1996) (holding IAD only applicable where defendant is imprisoned in correctional institution in another jurisdiction, not when he is on parole); *State ex rel. Haynes v. Bellamy*, 747 S.W.2d 189, 190-191 (Mo.App.W.D. 1988). Other states have held similarly. *See, e.g., Cunningham v. State*, 14 S.W.3d 869 (Ark. 2000); *State v. Butler*, 496 So.2d 916 (Fla.Dist.Ct.App. 2d Dist. 1986); *State v. Bellino*, 557 A.2d 963 (Maine, 1989); *State v. Smith*, 353 N.W.2d 338 (S.D. 1984); *Womble v. State*, 957 S.W.2d 839 (Tenn.Crim.App. 1997); *State v. Holley*, 571 A.2d 892 (Md.Ct.Spec.App.1990); *State v. Dunlap*, 290 S.E.2d 744 (N.C.Ct.App. 1984); *State v. Burnett*, 798 A.2d 96 (N.J.SuperA.D. 2002).

(Mo.App.S.D. 1986), the Dallas County prosecutor filed detainers with the federal warden in California for two escape charges that Hicks was facing back in Missouri. *Id.* at 87. Hicks was returned to Missouri where he pled guilty to the escape charges. *Id.* He also went to trial on the robbery case. *Id.* He was convicted and then returned to California to finish his federal sentences there. *Id.* Subsequently, he was returned to Missouri to serve the sentence on his robbery conviction. Hicks argued that he made a request for final disposition under the IAD on September 19, 1977, and his robbery trial did not take place until May 3, 1978, 226 days after Hicks had requested final disposition of all detainers pending against him. *Id.* at 89. But Hicks's claim failed because at the time he filed his request for final disposition of detainers, there was no detainer filed with respect to the robbery charge (although there were detainers lodged on the escape charges). *Id.* The provisions of the IAD are triggered only when a detainer is filed with the custodial State by the receiving state having untried charges pending against the prisoner. *Id.* at 90.

The Court in *Hicks* cited to *Commonwealth v. Anderson*, 378 N.E.2d 451 (1978), where the prisoner in New Hampshire had several charges pending against him in Massachusetts. Similarly, in that case, the court found that the prisoner's request for disposition of detainers under the IAD did not apply to a charge because no detainer concerning that charge had been lodged.

In the *Hicks* case, since no detainer had been lodged against Hicks with respect to the Webster County robbery when Hicks made his request for final disposition, his request was ineffective and the IAD was not triggered. *Hicks, supra* at 90. Similarly, in the present

case, since no detainer had been lodged against respondent when he made his request for final disposition, his request was ineffective and a nullity, and the IAD was not triggered.

Thus, in the present case, as there was no evidence that a detainer had been lodged against respondent at the time respondent filed his request for disposition, the trial court clearly erred in finding that the IAD had been triggered and in dismissing respondent's case. Nor can it be said that the IAD was triggered when the detainer was lodged by virtue of the fact that respondent had filed a request three days prior to the filing of the detainer. The lodging of a detainer does not "relate back" and serve to activate an otherwise invalid request for disposition. For example, in *Burnes v. State*, 92 S.W.3d 342 (Mo.App.S.D. 2003), Burnes prematurely filed a request for disposition of detainers when, in fact, no detainer existed. *Id.* at 347. Burnes argued that his demand for trial became automatically effective once Greene County filed a complaint against him. *Id.* This Court rejected Burnes's argument, finding that absent the presence of a detainer, the law did not allow Burnes to request a final disposition of the Greene County charges.²

In *Commonwealth v. Petrozziello*, 491 N.E.2d 627 (Mass.App. 1986), the defendant argued that the four requirements which trigger the relevant time periods in the IAD did not have to occur in any special sequence and that, upon occurrence of the last of the

²The *Burnes* case addresses the Uniform Mandatory Disposition of Detainers Law (UMDDL), which applies to prisoners who are incarcerated in Missouri who have other Missouri charges pending. The UMDDL and the IAD are read *in pari materia*. *State v. Overton*, 261 S.W.3d 654, 662 (Mo.App.S.D. 2008).

requirement, the limitation periods should be deemed to have commenced running on the date the first requirement. *Id.* at 78-79. The Court rejected this argument, finding that if it were carried to its logical extreme, it would cause “considerable confusion.” *Id.* at 79. The Court noted, for example, that immediately upon detention, prisoners could file a request for final disposition of charges pending in other jurisdictions, even if they did not have detainers filed against them *Id.* Prosecutors would therefore be pressed to file detainers prematurely. *Id.* The court found no authority to support the defendant’s argument.

Appellant, too, has not found any authority to support the premise that when a detainer is filed, it relates back to and triggers a prematurely filed request for disposition of detainers. Thus, in the present case, because there was no detainer lodged against respondent until after April 26, 2010, respondent could not request a final disposition of the Lawrence County charges on April 23, 2010. The associate circuit court thus clearly erred in dismissing the Lawrence County charges for alleged violation of the IAD.

CONCLUSION

In view of the foregoing, appellant submits that the dismissal of respondent's charges in Case Nos. 09LW-CR00950, 09LW-CR00952, and 09LW-CR01053 be reversed and the causes reinstated.

Respectfully submitted,

CHRIS KOSTER
Attorney General

KAREN L. KRAMER
Assistant Attorney General
Missouri Bar No. 47100

P. O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-5391
karen.kramer@ago.mo.gov

ATTORNEYS FOR APPELLANT

CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains _____ words, excluding the cover, certification and appendix, as determined by Microsoft Word 2007 software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed this _____ day of August, 2011, to:

Craig A. Johnston
Office of State Public Defender
1000 West Nifong
Columbia, MO 65203

KAREN L. KRAMER

APPENDIX

Order and Judgment..... A-2

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