

IN THE SUPREME COURT OF OHIO

13-0552

STATE OF OHIO,

Appellant,

vs.

JAMES D. BLACK,

Appellee.

On Appeal from the Ashland County
Court of Appeals, Fifth Appellate
District

Case No.

Appellate No. 12-COA-018

MEMORANDUM IN SUPPORT OF JURISDICTION, STATE OF OHIO

Ramona J. Rogers (#0031149)
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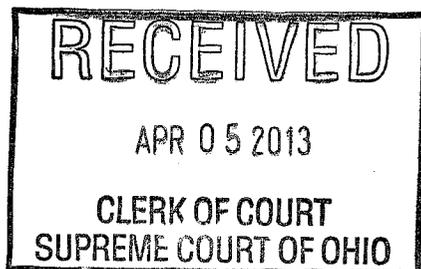


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- A. Opinion of the Ashland County Court of Appeals (March 15, 2013)
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- C. Judgment Entry of the Ashland County Court of Common Pleas (December 9, 2011)
- D. Judgment Entry of the Ashland County Court of Common Pleas (February 14, 2012)

**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR
GREAT GENERAL INTEREST**

The Interstate Agreement on Detainers (hereinafter IAD) as codified in Ohio Revised Code 2963.30 is a law which allows prisoners that have “entered upon a term of imprisonment in a penal or correctional institution of a party state” to resolve detainers based on pending charges in other party states and also permits authorities to request the transfer of persons incarcerated in other states for resolution of untried charges. R.C. 2963.30(III)(a) and IV(a). The Fifth District Court of Appeals in this matter has ruled that the IAD applies to “offenders held in county jails.” *State v. Black*, 5th Dist. No. 12-COA-018, 2013-Ohio-976, ¶ 17. The Eighth District Court of Appeals has previously ruled that the IAD only applied to inmates in state prisons systems stating “the IAD is clear that the term of imprisonment must be served in a penal or correctional institution of a party state.” *State v. Wyer*, 8th Dist. No. 82962, 2003-Ohio-6296, ¶ 15. The disagreement between the Fifth and Eighth Districts as to whether “penal or correctional institution of a party state” includes county jails or just state prison systems amounts to a conflict between the districts. The Appellant has moved the Fifth District to certify the conflict to this Court, but the Appellant likewise points out that the existence of this conflict under these circumstances does create an issue of public or great general interest.

Under the present state of the law in Ohio, courts, prosecutors, and defendants in the Fifth and Eighth Districts have guidance, albeit conflicting, as to how to handle a request for disposition under the IAD from an out-of-state county jail inmate; however, institutions in other Ohio districts do not have such guidance. A defendant with charges pending in any district in Ohio other than the Fifth or Eighth District would find only confusion as to when to file a request for disposition under the IAD. Likewise, courts

2013 that the IAD does apply to persons “held in county jails as well as state penal or correctional facilities.” *Black* at ¶ 17.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW
PROPOSITION OF LAW NO. I

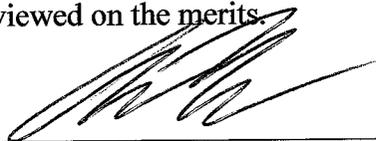
This case involves the question of whether the phrase “term of imprisonment in a penal or correctional institution of a party state” includes inmates of county jails or just state prison systems. The Eighth District found the plain language of R.C. 2963.30 “clear” in holding that this language only encompassed party state prison systems. *Wyer* at ¶ 15. The *Wyer* court added that “the legislature chose not to include language encompassing all correctional facilities.” *Id.* The legislature did not broadly term this statute so as to apply to all detention facilities operated by the State of Ohio and any political subdivisions, such as counties. Rather, the legislature limited the scope of this statute to facilities operated by the state. The Eighth District’s holding coincides with the definition of jail and prison contained in Ohio law. The term “jail” is defined in R.C. 2929.01 as a “jail, workhouse, minimum security jail, or other residential facility used for confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.” In that same section, “prison” is defined as a “residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction.” Ohio law recognizes the difference between a jail and a prison and the entity that operates such facilities. The IAD only applies to persons serving terms of imprisonment in a state facility, not any facility operated by any political subdivision.

The Fifth District in the present matter deemed *Wyer* not persuasive and relied on a case from the State of Arizona instead. *Escalanti v. Superior Court*, 165 Ariz. 385, 799 P2d 5 (Ariz. App. 1990). The portions of the *Escalanti* decision relied upon by the Fifth District do not involve any determination of what “party state” means nor whether it

covers just state prison systems or all detention facilities including those operated by political subdivisions. Instead, the Fifth District limited its consideration of *Escalanti* to dicta concerning whether the terms “penal institution” or “correctional institution” could include jails. *Black* at ¶ 26-27 citing *Escalanti* at 387. Relying on a broad definition of said terms derived from Black’s Law Dictionary, the *Escalanti* court as cited by the Fifth District determined that jails could qualify as a penal or correctional institution. *Id.* The Appellant certainly agrees that under a broad construction penal or correctional institution may include jails, but this completely disregards the qualifier contained in the statute “of a party-state.” County jails are not operated by the state, but rather a detached political subdivision. Such language is not included in R.C. 2963.30. The Fifth District’s decision contains no discussion of what “party state” means and whether it should be interpreted in the broadest sense to include all separate political subdivisions. The Fifth District instead looked at only a limited portion of the text of R.C. 2963.30, rather than considering the context of that text or even the full sentence containing that text.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest. The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.


ANDREW N. BUSH (#0084402)
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum in Support of Jurisdiction, State of Ohio was served via regular U.S. Mail postage prepaid on Daniel Mason, legal counsel for Appellee, 145 Westchester Drive, Amherst, Ohio 44001, this 5th day of April, 2013.



ANDREW N. BUSH (#0084402)
Assistant Prosecuting Attorney

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

2013 MAR 15 AM 9:11

STATE OF OHIO

Plaintiff-Appellee

JUDGES:

Hon. Patricia A. Delaney, P.J.

Hon. William B. Hoffman, J.

Hon. Sheila G. Farmer, J.

ANNETTE SHAW
CLERK OF COURTS
ASHLAND, OHIO

-vs-

JAMES D. BLACK

Defendant-Appellant

ASHLAND COUNTY PROSECUTOR

RECEIVED

MAR 15 2013

Case No. 12-COA-018

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Ashland County Court of
Common Pleas, Case No. 12-CRI-010

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

RAMONA FRANCESCONI ROGERS
ASHLAND COUNTY PROSECUTOR

DANIEL D. MASON
145 Westchester Drive
Amherst, Ohio 44001

By: ANDREW N. BUSH
Assistant Prosecuting Attorney
110 Cottage St.
Ashland, Ohio 44805

PA

Hoffman, J.

{¶1} Defendant-appellant James D. Black appeals his conviction and sentence entered by the Ashland County Court of Common Pleas, on two counts of theft and one count of breaking and entering, following a jury trial. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} On August 2, 2010, an Ashland County Grand Jury indicted Appellant in Case No. 10-CRI-080. The trial court issued a warrant for Appellant's arrest.

{¶3} On January 27, 2011, prior to the service of the indictment on Appellant, Appellant filed a handwritten "Notice of Availability" with the trial court. A copy of the Notice was sent to the Ashland County Prosecutor's Office. The State filed a response to the Notice, informing the trial court Appellant was being held in a county jail in the State of Maryland, awaiting sentencing. The State also advised the trial court Appellant was not serving any sentence at that time and was not incarcerated in a state penal institution; therefore, Appellant's Notice was premature and R.C. 2963.30, the Interstate Agreement on Detainers ("IAD"), was not applicable.

{¶4} On August 22, 2011, Appellant filed a motion to dismiss, asserting the State violated his right to a speedy trial by failing to prosecute him within the time required by R.C. 2963.30. The trial court denied the motion on September 6, 2011. The State offered Appellant a plea deal, warning if such was not accepted, the State intended to re-indict him with additional charges.

{¶5} On January 26, 2012, the Ashland County Grand Jury re-indicted Appellant on two counts of theft, felonies of the fifth degree, and one count of breaking

and entering, a felony of the fifth degree, as well as an additional count of burglary, a felony of the second degree in Case No. 12-CRI-010. The trial court dismissed Case No. 10-CRI-080.

{116} Appellant filed a motion to dismiss the new indictment on February 3, 2012. Therein, Appellant asserted the State failed to bring him to trial within the 180 day time frame imposed by Article III(a) of the IAD, following his delivery of a Notice and Request for Final Disposition on January 27, 2011. Appellant further argued the State failed to bring him to trial within the 120 time limit imposed by Article IV(c) of the IAD when he was returned to the State of Maryland following action by Richland County, Ohio, to transport him to Ohio in response to an indictment filed in that county.

{117} The trial court conducted a hearing on Appellant's motion to dismiss. The following evidence was adduced at the hearing.

{118} After receiving notice from Appellant, authorities in Richland County engaged in procedurally appropriate action pursuant to Article IV of the IAD. In response to the action of Richland County, on or about May 27, 2011, Appellant was transported from the State of Maryland to the State of Ohio. Appellant remained in the State of Ohio until August 1, 2011, during which time the Richland County charges were resolved. Also while Appellant was in Ohio, on July 8, 2011, the Ashland County Court of Common Pleas arraigned Appellant in Case No. 10-CRI-080. Appellant was returned to the State of Maryland prior to a final disposition of the Ashland County matter.

{119} Via Judgment Entry filed February 14, 2012, the trial court overruled Appellant's motion to dismiss, finding the IAD was not applicable to him.

{¶10} On March 12, 2012, the State moved to amend the indictment. The trial court granted the motion and the indictment was amended, reducing the degree of the two theft counts to misdemeanors of the first degree. The matter proceeded to jury trial on March 13 and 14, 2012. The jury found Appellant guilty of two misdemeanor counts of theft as well as breaking and entering, the lesser included offense of burglary. The trial court ordered a presentence investigation and scheduled sentencing for April 30, 2012. The trial court imposed an aggregate term of imprisonment of twelve months.

{¶11} It is from this conviction and sentence Appellant appeals, assigning as error:

{¶12} "I. THE TRIAL COURT ERRED TO THE SUBSTANTIAL PREJUDICE OF DEFENDANT-APPELLANT WHEN IT OVERRULED HIS MOTION TO DISMISS BECAUSE DEFENDANT-APPELLANT WAS TRIED IN VIOLATION OF HIS RIGHT TO A SPEEDY TRIAL AND IN VIOLATION OF THE SINGLE-TRANSFER RULE OF THE INTERSTATE AGREEMENT ON DETAINERS."

I

{¶13} The Interstate Agreement on Detainers is a compact among 48 states, the District of Columbia, Puerto Rico, and the United States. *State v. Keeble*, 2d Dist. No. 03CA84, 2004-Ohio-3785, ¶ 9. The purpose of the IAD is expressly set forth in Article I of R.C. 2963.30, and provides:

{¶14} "The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trials of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation.

Accordingly, *it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition* of such charges and determination of the proper status of any and all detainees based on untried indictments, informations or complaints. * * *.” R.C. 2963.30, Art. I (Emphasis added).

{¶15} Under the provisions of the IAD, there are two methods by which to initiate the return of a prisoner from a sending state to a receiving state for the purpose of disposing of detainees based on untried indictments, informations, or complaints.¹ The prisoner may commence the process pursuant to Article III or, alternatively, a prosecutorial authority may initiate the return pursuant to Article IV.

{¶16} When a prisoner initiates his own return under Article III, the prisoner must be brought to trial within one hundred eighty days after the prosecutor's office in the receiving state obtains the request for a final disposition of untried charges. Alternatively, when the prosecutor's office initiates the return of the prisoner pursuant to Article IV, the trial must be commenced within one hundred twenty days of the prisoner's arrival in the receiving state. Articles III(a) and IV(c); *State v. Brown* (1992), 79 Ohio App.3d 445, 448, 607 N.E.2d 540. Regardless of whether the request is initiated pursuant to Article III or Article IV, the appropriate authority in the sending state must offer to deliver temporary custody of the prisoner to the receiving state to ensure the speedy and efficient prosecution of any untried indictments, informations, or complaints. Article V(a).

¹ Article II provides in part that “sending state” means “a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition[.]” By contrast, the “receiving state” is “the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV[.]”

{¶17} Appellant maintains the State failed to bring him to trial within the requisite time periods; therefore, the trial court erred in overruling his motion to dismiss.

{¶18} We review a trial court's decision interpreting the IAD de novo. *Riedel v. Consol. Rail Corp.*, 125 Ohio St.3d 358, 2010-Ohio-1926, 928 N.E.2d 448, ¶ 6; *State v. Jeffers* (June 20, 1997), Gallia App. No. 96 CA 13, 1997 WL 346158, at *1.

{¶19} In its February 14, 2012 Judgment Entry, overruling Appellant's motion to dismiss, the trial court found the IAD was not applicable to Appellant because Appellant was incarcerated in a county detention facility or jail in the State of Maryland, and not in a state penal or correction institution. The trial court cited this Court's decision in *State v. Neal*, 5th Dist. No. 2005CAA02006, 2005-Ohio-6699, as precedent for its decision. The trial court referenced paragraph 39 of *Neal*, which reads:

{¶20} "Pursuant to Article III(a) of R.C. 2963.30, Article III is only applicable where 'a person has entered upon a term of imprisonment in a penal or correctional institution of a party state'. 'Thus, where a person is being temporarily held in a county jail and has not yet entered a state correctional institution to begin a term of imprisonment, Article III cannot be invoked. See *Crooker v. United States* (C.A.1, 1987), 814 F.2d 75; *United States v. Glasgow* (C.A.6, 1985), 790 F.2d 446, 448, citing *United States v. Wilson* (C.A.10, 1983), 719 F.2d 1491'. *State v. Schnitzler* (Oct. 19, 1998), 12th Dist. No. CA98-01-008." *Id.* at 39.

{¶21} In *Neal*, this Court found the appellant had waived his right to challenge his conviction on speedy trial grounds as he had entered a guilty plea. *Id.* at 30. The Court noted, despite the waiver, it would have overruled the appellant's assignment of error on the speedy trial issue. *Id.* at 31. The Court found the IAD was the appropriate

statute under which to analyze the speedy trial issue, and conducted an analysis pursuant thereto. *Id.* at 38 - 43. Because the appellant had not complied with the IAD as he had failed to deliver a request for disposition to either the trial court or the prosecutor, this Court found he never triggered the process to cause him to be brought to trial within the statutory time frame.

{¶22} The language in the *Neal* decision referenced by the trial court in the case sub judice was dicta. This Court did not address the effect of the appellant's incarceration in a county jail in another state upon the application of the IAD. Accordingly, we find the trial court's reliance on *Neal* misplaced.

{¶23} The State relies upon the decision of the Eighth District Court of Appeals in *State v. Wyer*, 8th Dist. 82962, 2003 -Ohio- 6926, in support of its position. In *Wyer*, the Eighth District found an out-of-state county jail in which the defendant was incarcerated for an unrelated offense was not a "correctional institution of a party state" under the terms of the IAD; therefore, the IAD was inapplicable to that defendant. *Id.* at 15. The decisions of the Eighth District Court of Appeals are persuasive, but not binding, authority on this Court. Rule 4(A), Supreme Court Rules for the Reporting of Opinions. We do not find *Wyer* persuasive.

{¶24} Appellant cites a number of appellate cases from other states in support of his position, including *Escalanti v. Superior Court*, 165 Ariz. 385, 799 P2d 5 (Ariz. App 1990). In *Escalanti*, the Arizona Court of Appeals addressed the issue of whether the IAD applies to a defendant held in county jail as well as a defendant held in state prison. Answering in the affirmative, the *Escalanti* Court found:

{¶25} “Article III of the Agreement ensures a speedy trial to those in a ‘penal or correctional institution.’ We believe that this language clearly included the Santa Barbara County Jail. Clear language in a statute is given its usual meaning unless impossible or absurd consequences would result. *In re Marriage of Gray*, 144 Ariz. 89, 91, 695 P.2d 1127, 1129 (1985); *Balestrieri v. Hartford Accident & Indem. Ins. Co.*, 112 Ariz. 160, 163, 540 P.2d 126, 129 (1975). A ‘penal institution’ is a ‘generic term to describe all places of confinement for those convicted of crime such as jails, prisons, and houses of correction.’ Black’s Law Dictionary 1020 (5th ed. 1979). A ‘correctional institution’ is a ‘generic term describing prisons, jails, reformatories and other places of correction and detention.’ (Citation omitted).” *Id.* at 387.

{¶26} The *Escalanti* Court further noted for purposes of the IAD, “the only difference between the state prison and the county jail for an incarcerated person is the sign on the building. Nothing in Article III of the Agreement expressly limits its speedy trial guarantee to prisons. Nor does any language in the Agreement deny its protection to prisoners incarcerated in county jails. Instead, the Agreement by its terms applies to all penal and correctional institutions.” *Id.*

{¶27} We agree with the rationale of *Escalanti*, and find the IAD applies to offenders held in county jails as well as state penal or correctional facilities. The IAD specifically states, “This agreement shall be liberally construed so as to effectuate its purposes.” R.C. 2963.30, Art. IX. As stated, *supra*, the purpose of the IAD is “to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainees based on untried indictments, informations or complaints.”

{128} Appellant's sole assignment of error is sustained.

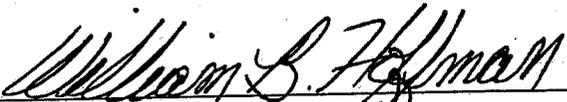
{129} The judgment of the Ashland County Court of Common Pleas is reversed.

The matter is remanded to the trial court for further proceedings consistent with the law and this opinion.

By: Hoffman, J.

Delaney, P.J. and

Farmer, J. concur


HON. WILLIAM B. HOFFMAN


HON. PATRICIA A. DELANEY


HON. SHEILA G. FARMER

IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

2013 MAR 15 AM 9:11

ANNETTE SHAW
CLERK OF COURTS
ASHLAND, OHIO

STATE OF OHIO

Plaintiff-Appellee

-vs-

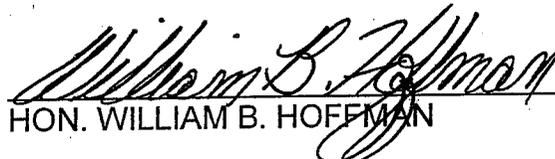
JAMES D. BLACK

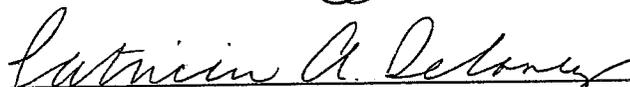
Defendant-Appellant

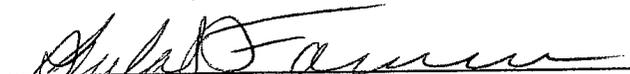
JUDGMENT ENTRY

Case No. 12-COA-018

For the reasons stated in our accompanying Opinion, the judgment of the Ashland County Court of Common Pleas is reversed. The matter is remanded to the trial court for further proceedings consistent with the law and our Opinion. Costs to Appellee.


HON. WILLIAM B. HOFFMAN


HON. PATRICIA A. DELANEY


HON. SHEILA G. FARMER

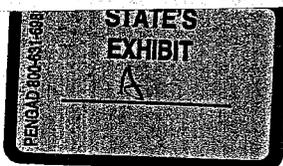
I, Annette Shaw, Clerk of Courts,
Ashland County, Ohio, hereby certify
this is a true and exact copy of the
original on file with this office.

Annette Shaw, Clerk of Courts

Annette Shaw
Clerk/Deputy Clerk

2-1-12
Date

EXHIBIT B



IN

2011 OCT -6 PM 12:11

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

ANNETTE SHAW
CLERK OF COURTS
ASHLAND, OHIO

Case No. 10-CRI-080

STATE OF OHIO,

Plaintiff,

vs.

JAMES D. BLACK,

Defendant.

JUDGMENT ENTRY VACATING TRIAL DATE

This case is before the Court *sua sponte* with regard to rescheduling the Jury Trial which is now scheduled to begin Tuesday, October 11, 2011.

The Court has been notified the Defendant in this case is currently incarcerated in the State of Maryland and is due to be released sometime in December, 2011. Defendant has indicated to defense counsel that he will not voluntarily return to the State of Ohio upon his release from incarceration.

Accordingly, it is ORDERED that the October 11, 2011 jury trial date in this case is continued to **Tuesday, December 6, 2011** to begin at 8:30 a.m.

It is so ORDERED.

Ronald P. Forsthoefel

RONALD P. FORSTHOEFEL
Judge of the Court of Common Pleas

cc: Prosecutor
Attorney Andrew G. Hyde
Defendant
APA

Hon. Ronald P. Forsthoefel, Judge, Common Pleas Court of Ashland County, Ohio

JM # 37 *Ad*

Ashland County, Ohio, hereby certify
this is a true and exact copy of the
original on file with this office.

EXHIBIT C

IN

Annette Shaw, Clerk of Courts

Denise Patton
Clerk/Deputy Clerk

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

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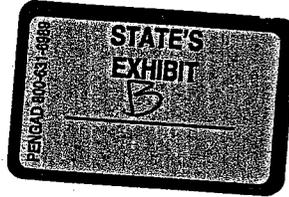
Date 2-1-12 STATE OF OHIO,

Plaintiff,

vs.

JAMES D. BLACK,

Defendant.



Case No. 10-CRI-080
ANNETTE SHAW
CLERK OF COURTS
ASHLAND, OHIO

JUDGMENT ENTRY

This case came on for a pretrial hearing this 6th day of December, 2011. The State of Ohio was present in open court represented by Assistant Prosecuting Attorney Paul T. Lange. The Defendant was not present. Attorney Andrew G. Hyde, the Defendant's legal counsel, was present.

The Court found that the Defendant had been advised of the date and time of the hearing. Based upon the Defendant's failure to appear, the Court ORDERED that a warrant be issued for the Defendant's arrest.

IT IS SO ORDERED.

Ronald P. Forsthoefel

JUDGE RONALD P. FORSTHOEFEL
COURT OF COMMON PLEAS

cc: Ashland County Prosecutor's Office
Andrew G. Hyde, Attorney for Defendant
James D. Black, Defendant
Adult Parole Authority

JM # 24 *JL*

EXHIBIT D

IN

**IN THE COURT OF COMMON PLEAS, ASHLAND COUNTY, OHIO
GENERAL DIVISION**

2012 FEB 14 PM 3:4
ANNETTE SHAW
CLERK OF COURTS
ASHLAND, OHIO

| | | |
|-----------------|---|---------------------|
| STATE OF OHIO, | : | |
| | : | |
| Plaintiff, | : | CASE NO. 12-CRI-010 |
| | : | |
| vs. | : | |
| | : | |
| | : | JUDGMENT ENTRY |
| | : | |
| JAMES D. BLACK, | : | |
| | : | |
| Defendant. | : | |

This matter is before the Court pursuant to the Defendant's "Amended Motion to Dismiss" filed in this case on January 13, 2012. The proceedings regarding the Defendant were initiated in Case No. 10-CRI-080. In that case, a Subrosa Indictment was filed on August 2, 2010, and a warrant for the Defendant's arrest was issued. On January 27, 2011 (prior to service of the indictment on the Defendant), the Defendant filed a handwritten "Notice of Availability" with the Court. A copy was provided to the Ashland County Prosecuting Attorney, who responded to the Notice indicating that the Defendant was being held in a county jail in the State of Maryland, awaiting sentencing. The charging Assistant Prosecuting Attorney noted in her response that the Defendant was not serving any sentence at that time, and was not incarcerated in a state penal institution. The January 27, 2011 handwritten "Notice of Availability" was therefore premature, and R.C. 2963.30 (Interstate Agreement on Detainers or "IAD") was not applicable to the January 27, 2011 Notice. *State v. Schnitzler*, 12th Dist. No. CA98-01-008, 1998 Ohio App. Lexis 4905 (Oct. 19, 1998).

On August 22, 2011, the Defendant, through counsel, filed a notice to dismiss in Case No. 10-CRI-080, As a basis for his motion, the Defendant asserted that the State violated his speedy trial rights, by failing to prosecute him within the time required by R.C. 2963.30. That motion was dismissed, but refiled as an Amended Motion to Dismiss in Case No. 10-CRI-080 on January 13, 2012, and in the present case on

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February 3, 2012. With the filing of a new indictment in the present case, the prior indictment filed in Case No. 10-CRI-080 was dismissed, and that particular case was concluded. An evidentiary hearing was conducted on Defendant's motion in Case No. 12-CRI-010 on February 3, 2012.

Defendant asserts that the State has failed to try him within the 180 day time limit imposed by the IAD [Article III(a) of R.C. 2963.30] following his delivery of a Notice and Request for Final Disposition on January 27, 2011. Defendant further asserts that the State has failed to try him within the 120 day time limit imposed by the IAD [Article IV(c) of R.C. 2963.30] when he was returned to the State of Maryland following action by Richland County, Ohio to transport the Defendant to Ohio to respond to an indictment filed in Richland County, Ohio.

The remaining pertinent facts in this case are, for the most part, generally agreed up. It is well established that upon receiving some type of notice from the Defendant, Richland County, Ohio authorities engaged in action that procedurally complied with Article IV of the IAD. As a result of the actions of Richland County Officials, the Defendant was transported from the State of Maryland to the State of Ohio on or about May 27, 2011. The Defendant was subsequently returned to the State of Maryland on or about August 1, 2011. During that time, Defendant initially appeared in Ashland County, Ohio in Case No. 10-CRI-080, but was returned to the State of Maryland before final disposition.

If Article IV of the IAD is applicable to the Defendant, then the 120 day period specified in Article IV(c) expired around the end of September, 2011 and the pending Ashland County indictment should be subject to dismissal. If Article III of the IAD is applicable to the Defendant, then the 180 day period specified in Article III(a) of the IAD expired sometime around the end of July, 2011, and the pending Ashland County indictment should be subject to dismissal for that reason as well. The Court finds, however, that the IAD is not applicable to this Defendant. Throughout the events beginning in January, 2011, the Defendant was incarcerated in one or another county

JM #

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detention facilities or jails in the State of Maryland, and not in a state penal or correctional institution. The IAD only applies to individuals incarcerated in state penal or correctional institutions. *State v. Neal*, 5th Dist. No. 2005CAA02006, 2005-Ohio-6699, ¶ 39. The Court does not find the actions of Richland County officials, in following IAD procedures to secure the Defendant's appearance in Richland County, determinative as to whether the IAD actually applies to this Defendant.

Based on the foregoing analysis, the Court finds that the R.C. 2963.30 or IAD is not applicable to this Defendant. The Court therefore finds the Defendant's motion not well taken.

The Court hereby ORDERS that the Defendant's Motion to Dismiss, filed February 3, 2012 is hereby OVERRULED.



Ronald P. Forsthoefel, Judge

cc: Defendant
Attorney Hyde
Prosecuting Attorney

JM# 43 65