ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	)	
	)	Case Number: 2013-0552
Appellant,	)	
	)	Appellate Case No. 12-COA-018
-vs-	)	
	)	
JAMES D. BLACK,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM IN RESPONSE

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I. **Whether this is a case of public or great general interest.**

This case is not one of public or great general interest. The Interstate Agreement on Detainers ("IAD") was enacted in Ohio in 1969. Counsel for both sides have only found *one* Ohio case prior to the instant case where the legal issue before this Court was addressed. That means that the issue before this Court arises in Ohio's appellate courts only twice every 44 years. Because this issue arises so rarely, it can hardly be called a matter of "public or great general interest."

Appellant argues that this is a case of public or great general interest because the aforementioned two decisions are conflicting. The appellate court in *State v. Wyer*, 8th Dist. No. 82962, 2003-Ohio-6296, held that a prisoner of a county jail – regardless of its nature – is not entitled to the benefits of the IAD. The appellate court below in the instant case held that the IAD was intended to be given a liberal construction to effectuate its purpose and applies to both prisoners of county and state jails. Appellant is correct that the *holdings* are in conflict. But it does not mean, as Appellant argues, that the two cases will cause confusion among this state's various appellate districts when or if they are called upon to address the same situation that arose in *Wyer* and the instant case.

There is unlikely to be confusion because the decision in *Wyer* contains minimal analysis; and what little analysis it does contain is so clearly wrong. When comparing the lengthy analysis of the decision below with the decision in *Wyer*, we are confident that all future appellate courts in Ohio will follow the more recent, better-considered decision. Thus, although there is a technical conflict between the two decisions, on the rare occasions that this issue arises before this state's appellate courts, future decisions will follow the nationwide majority rule, i.e., the holding in the instant case.

In the next section, we will show that the issue herein was so clearly and correctly decided by the appellate court below that the issue in this case is really a "nonissue" and thus does not pose a question of public or great general interest.

II. Argument against the Appellant's Proposition of Law.

Appellant's proposition of law runs contrary to the statutory purpose and the express language of R.C. 2963.30, the IAD. The statutory purpose of the IAD is to benefit prisoners who cannot receive rehabilitation while other states have detainers placed on them. The salutary purpose of the statute is set forth in the statute itself:

> 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 detainers based on untried indictments, informations or complaints.

R.C. §2963.30, Article I. Thus, the statute expressly states that its purpose is for the benefit of the treatment and rehabilitation of prisoners, as well as securing their right to speedy trials, a right of all citizens as expressed in U.S. Constitutional Amendment VI.

Thus, it is a "remedial statute" designed to provide remedies for citizens our General Assembly deemed aggrieved. Remedial statutes are to be liberally construed to effectuate their purposes. In fact, our legislature expressly states that this statute "... shall be liberally construed so as to effectuate its purposes." R.C. §2963.30, Article IX.

The statute is designed to prevent the detainers of various jurisdictions from interfering with the programs of prisoner treatments and rehabilitation, as well as giving citizens speedy trials. In this case, James Black had a detainer against him from Ashland County. As he testified in this case, the detainer prevented him from receiving rehabilitation. He therefore asked the three counties of Ohio holding detainers to prosecute him. Of course, he did this through the Interstate Agreement on Detainers.

Article III(a) of Revised Code §2963.30, the IAD, required Ashland County to bring Appellee Black to speedy trial within 180 days of his request for disposition of the charges against him. Article III(d) – the single transfer rule – required Ashland County to dispose of the charges against Mr. Black before he was sent back to Maryland. Specifically, Article III(d) in pertinent part states: "If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice." Because Ashland County failed to try Mr. Black within 180 days of his request for disposition or before he was transferred back to Maryland, the appellate court correctly found that the trial court herein should have granted the Motion to Dismiss with prejudice instead of allowing Ashland County to continue its prosecution.

Plaintiff-Appellant claims that the protections of R.C. §2963.30 do not apply to this case because Mr. Black was incarcerated in a county jail in Maryland and, the argument goes, the IAD does not apply to prisoners in county jails, but only to those held in *state* correctional institutions. We will examine the authorities below and demonstrate that there is nothing in the IAD itself suggesting that it does not apply to "county jails" and demonstrate that the overwhelming weight of authority establishes that the IAD is applicable to any person after he or she is sentenced and incarcerated, regardless of the name on the building where he or she is imprisoned.

The IAD is a model law which has been adopted by all of this nation's jurisdictions except one. In fact, the Tenth District Court of Appeals has held: "The IAD is an interstate compact to which Ohio is a member, and has been codified at R.C. §2963.30. As 'a

congressionally sanctioned interstate compact within the Compact Clause, U.S. Const., Art. I, § 10, cl. 3, [the IAD] is a federal law subject to federal construction.' *Carchman v. Nash* (1985), 473 U.S. 716, 719, 105 S.Ct. 3401, 3403, 87 L. Ed. 2d 516; *Cuyler v. Adams* (1981), 449 U.S. 433, 436-442, 101 S.Ct. 703, 706-708, 66 L. Ed. 2d 641." *State v. Jennings*, 2007-Ohio-7015, ¶8.

By its nature, the IAD involves citizens of the various states dealing with the courts of other states. The overwhelming weight of authority agrees that a consistent, national approach should be taken by the courts applying the IAD. We will begin our analysis of cases involving the fact pattern before this Court, i.e., where a prisoner is incarcerated in a term of imprisonment but in a "county jail," with an appellate decision that has already made a thorough analysis of this issue.

In the appellate case of *Escalanti v. Superior Court*, 165 Ariz. 385, 799 P.2d 5 (Ariz.App. Div. 1 1990), the issue before the court was whether Article III of the IAD applied to the prisoner of a county jail who was *not* a temporary detainee but serving a term of imprisonment there. The court recognized that it is important for the parties to the IAD to interpret it uniformly: "This court recognizes the importance of uniformity in interpreting interstate agreements." *Id.*, p. 388, 799 P.2d at 10.

In continuing its analysis, the court cited two states that did not apply the IAD to county jails. In Nevada, however, the county jails provide no rehabilitation; therefore the purpose of the IAD is not applicable there. The court in *Escalanti* also refused to follow the precedent of an Indiana court whose analysis was faulty. The court in *Escalanti* instead performed its own analysis of the IAD statute and determined that its intent was to benefit all prisoners who are in jails or prisons who might be subject to rehabilitation but which rehabilitation is thwarted

because of the detainers placed on prisoners by other states and their political subdivisions. This is the stated purpose of the IAD, at Article I. The IAD does *not* distinguish between jails that provide rehabilitation and other correctional institutions that provide rehabilitation. The court in *Escalanti* therefore held that the IAD applies to any person serving a term of imprisonment whether it is in a building designated as a "jail" or one designated as a "correctional institution." *Id.*, p. 389, 799 P.2d at 14.

In the instant case, the county jail in Maryland where Mr. Black was held provided rehabilitation to its prisoners, and would have provided it to Mr. Black but for the detainers held against him by three Ohio jurisdictions, including Ashland County. Under these circumstances, it would be contrary to the stated purpose of the IAD, i.e., R.C. §2963.30, to distinguish Mr. Black from a person who the State of Maryland happens to incarcerate in one of its state institutions.

Other courts agree. In *Tennessee v. Lock*, 839 S.W.2d 436, 444 (Tenn. App. 1992), the appellate court held that prisoners serving their sentences in county jails should be treated the same as those in state correctional facilities. In so holding, the court expressly adopted the rule in the leading case on the subject, *Felix v. United States*, 508 A.2d 101 (D.C. App. 1986).

In *Felix*, the defendant was convicted in New York on charges of robbery and sentenced to prison. While awaiting transfer to the state correctional facility, the defendant issued a notice and request under the IAD to the District of Columbia for a final disposition of a detainer being held there. He was transferred to the District of Columbia but not brought to trial within the 120 days required under the IAD. The defendant moved to dismiss the charges against him. The state claimed that the IAD did not apply because the defendant had merely been in a county jail and not in one of New York's state correctional institutions. The court in *Felix* held that the

IAD became applicable as soon as a prisoner began serving a term of imprisonment regardless of whether it was in a county jail or a state correctional facility. *Id.* at 106. The independent analysis of the court in *Felix* is impressive, but the court also noted that its holding was part of the "widely accepted view," citing numerous cases in support. *Id.*

As part of its rationale, the *Felix* court noted: "Different jurisdictions maintain various types of correctional institutions and different administrative procedures for both incarcerating a prisoner and instituting that prisoner's rehabilitation program. Uncertainty would be created if every time an IAD claim was raised this court was required to examine an individual prisoner's rehabilitative status within a particular state correctional system." *Id.* Although the court in *Felix* thought it unwise to base a decision on an in-depth analysis of whether a detainer did or did not affect the opportunities for rehabilitation of an individual prisoner, we should point out that even if this Court felt that the inquiry would turn on that issue, the testimony in this case establishes that Mr. Black had the opportunity for rehabilitation programs while serving his sentence in the Cecil County Jail just as he might have had in a state correctional facility. He was denied that opportunity because of the detainers against him. Thus, Appellee Black is exactly the class of individual this remedial statute was designed to protect.

Besides the fact that Maryland incarcerates its citizens in county jails for long-term prison sentences and provides them the type of rehabilitation services generally attributed to state correctional institutions, Maryland has expressly included *local* correctional facilities within the purview of its version of the IAD. Maryland Code section 8-401, the definitional section of its statutory enactment of the IAD, states: "d) Correctional institution. – 'Correctional institution' means, with reference to the correctional institutions of this State, any State or *local* correctional facility." (Emphasis added) Thus, it seems illogical and contrary to the statutory purpose to

artificially exclude from the benefits of the IAD those individuals who happen to be serving their prison terms in county correctional facilities or "jails" rather than larger, perhaps state-run correctional facilities. Nevertheless, there is one Ohio appellate court that has accepted this artificial distinction. It is the case relied upon by Appellant, and the case we will examine next.

In the court below, Appellant relied upon the Ohio case of *State v. Wyer*, 2003-Ohio-6926, a case from the Eighth Appellate District. The decision in *Wyer* is a short read. Its only analysis of case authority is this: "In support of its position, the state cites *State v. Schnitzler* (1998), Clermont Cty. case No. CA 98-01-008, 1998 Ohio App. LEXIS 4905. In *Schnitzler*, the court held that '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.' We agree." *Wyer,* ¶14. With regard to this argument, it is not germane to the fact pattern in the case at bar. We have already established that the IAD does not apply to pretrial detainees in county jails but that the "widely accepted view" is that it *does* apply to persons in *any* jail where the prisoner is serving out a term of imprisonment.

The second rationale of the court in *Wyer* is the position that the IAD was only meant to apply to prisoners in a "penal or correctional institution of a party state." *Id., ¶15.* The court in *Wyer* was stating that the prisoner must be in a *state* facility and not a prisoner held in a jail of a state's political subdivisions. There is no logical support for this distinction. The court in *Wyer* was evidently citing the first clause of the first sentence of Article III(a), which refers to person in correctional facilities of "party states". From this isolated phrase, that court concluded that only prisoners in state-run facilities were subject to the IAD.

But, the court should have noted the use of the same phrase "party state" just a little later in the same sentence where it says, "whenever during the continuance of the term of

imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner...." Thus, the phrase "party state" is again used to mean not just a detainer from a state authority but, as here, a detainer from an authority of one of the state's political subdivisions, e.g., Ashland County, Richland County, etc.

The phrase "party state" also appears in Article IV of the IAD. Article IV allows the officer of any jurisdiction of Ohio to obtain a prisoner serving a term of imprisonment "in any party state." In other words, any county prosecutor may obtain a prisoner in any party state, even if the prisoner is not in a state correctional facility. Thus, if we read Article III the way the court in *Wyer* interpreted it, county officials in Ohio can obtain county prisoners under Article IV, but those prisoners serving terms in county facilities cannot obtain relief under Article III. This lack of "reflexivity" appears to go against the purpose of this remedial statute which is designed for the benefit of prisoners who might otherwise obtain rehabilitation but for the detainers laid upon them by other states or their political subdivisions.

In Article VIII, the phrase "party state" appears in the first sentence where it reads: "This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law." If we give the phrase "party state" the same limited meaning given to it by the court in *Wyer*, then the agreement is not valid as between the political subdivisions or counties of the various party states to the IAD. Obviously, this was not the intent of the statute.

We should not perform intellectual gymnastics with statutory terminology. We should give the same term a consistent meaning, consistent with the statutory purpose. "Generally, in the construction of a statute, similar language contained within the same section of a statute must be accorded a consistent meaning." 85 O. Jur. Statutes Sec. 225. Also, the statute itself, at

Article IX, mandates that courts "liberally construe" its provisions to effectuate its purpose. It is apparent that the court in *Wyer* construed the statutory language *against* its express purpose of benefitting the rehabilitation process of inmates.

The Appellant is relying entirely on the isolated phrase "of a party state" to support its position that the prisoner must be in a correctional owned and operated by a state and not one of its political subdivisions. The statute uses the word "state" in its lower case form, which we take to mean the use of the word in a general, undefined sense. The statute does not use the upper-case "State", which would suggest the term means the State as a political entity, as when we use the term "State of Ohio". We take the phrase of Article III(a) "entered upon a term of imprisonment in a penal or correctional institution of a party state" not to be a reference to institutions "of the State" but institutions "of a party state" as opposed to institutions of *non-*party states. This pattern statute was not attempting to limit its benefits to prisoners hoping for rehabilitation in State institutions but was simply saying its benefits did not apply to prisoners in jails in states who had *not* also enacted the IAD.

A further analysis of the word "state" in the statute bolsters "the widely accepted view" that it applies to more than just state-run jails. Article II, in pertinent part, states:

> (b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.
>
> (c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

R.C. 2963.30, Article II. In this Article, the word "state" clearly indicates that it applies to any prisoner held in the state, not simply in a jail owned *by* the State.

The decision in *Wyer* upon which the Appellant places so much reliance did not thoroughly analyze the IAD or, evidently, the case law interpreting this issue. The first Ohio appellate court addressing this particular issue with a deep analysis was the appellate court below. After analyzing the IAD from a national perspective, the court below wisely chose to follow the more "widely accepted view" on this subject and carry-out the statute's salutary purpose. This new decision is only the second appellate case in Ohio on this issue, but it is now the leading case. Although the Court could also review this issue, we strongly believe that the opinion of the appellate court below will be sufficient to set the standard for any courts in Ohio that might later face this issue. Accordingly, accepting this case for review is not a matter of public or great general interest.

CONCLUSION

Based on the foregoing, the Court should overrule the request for jurisdiction.

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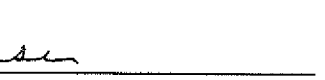
PROOF OF SERVICE

I sent a copy of this Memorandum in Response on the 19th day of April 2013, to Attorney for the State of Ohio, Ramona Francesconi-Rogers, Ashland County Prosecutor, 110 Cottage Street, Ashland Ohio 44805.



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