

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellant,

vs.

JAMES D. BLACK,

Appellee.

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

Case No. 2013-0552 & 2013-0805

Appellate No. 12-COA-018

BRIEF OF APPELLANT, STATE OF OHIO

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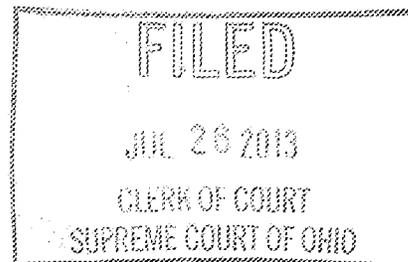
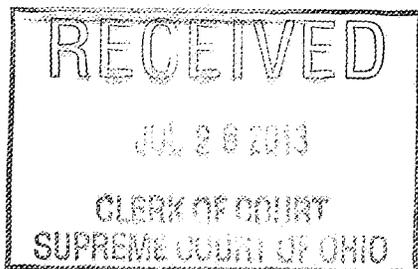


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STATEMENT OF THE FACTS

In March, 2011, while serving a twelve month jail sentence in the State of Maryland, Appellee requested disposition of charges in Ashland, Franklin, and Richland Counties in the State of Ohio. (Transcript of February 3, 2012 motion hearing, 45-47). Appellee was transferred to Richland County from May 27, 2011 until August 1, 2011. (T., 51). During his time in Richland County, Appellee was taken to Ashland County on July 8, 2011 and arraigned, but immediately returned to Richland County. (T., 40). Appellee was then returned to the State of Maryland on August 1, 2011. (T., 51). Appellee's jail sentence in Maryland ended on September 14, 2011, but he refused extradition to Ohio, prompting the trial court to continue the jury trial initially scheduled for October 11, 2011. A judgment entry reflecting this refusal is attached hereto and marked Exhibit B. The Appellee then failed to appear for his December 6, 2011 trial date as reflected in the entry attached hereto and marked Exhibit C.

Appellee later turned up in Medina County, Ohio and was transferred back to Ashland County. Appellee moved to dismiss his then pending Ashland County charges based on alleged violations of R.C. 2963.30, the Interstate Agreement on Detainers (hereinafter "IAD"). The trial court denied that motion holding that the IAD was not applicable to Appellee because at the time of his request for disposition under the IAD he was held in "county detention facilities or jails in the State of Maryland, and not in a state penal or correctional institution." (Exhibit D). The Appellee was then convicted of Breaking and Entering and two counts of Theft at trial. That conviction was appealed based on the underlying denial of the Appellee's motion to dismiss based on the inapplicability of the IAD. The Fifth District ruled on March 15, 2013 that the IAD

does apply to persons “held in county jails as well as state penal or correctional facilities.” *State v. Black*, 5th Dist. No. 12-COA-018, 2013-Ohio-976, ¶ 17.

ARGUMENT

APPELLANT'S PROPOSITION OF LAW I

THE INTERSTATE AGREEMENT ON DETAINERS AS CODIFIED IN R.C. 2963.30
BY ITS PLAIN LANGUAGE ONLY APPLIES TO INMATES OF PARTY-STATE
PRISON SYSTEMS AND NOT COUNTY JAIL INMATES.

The sole issue before this Court is whether the term “penal or correctional institution of a party state” as used in R.C. 2963.30 includes county jails.

The plain language of Article III(a) of the IAD as found in R.C. 2963.30 dictates that the IAD is only applicable where “a person has entered upon a term of imprisonment in a penal or correctional institution of a party state.” At the appellate level in this matter, in ruling that the this language includes county jails, the Fifth District relied heavily on broad meaning given to the terms “penal institution” and “correctional institution” in Black’s Law Dictionary (5th Ed. 1979) and an earlier Arizona case, *Escalanti v. Superior Court*, 165 Ariz. 385, 799 P2d 5 (Ariz. App. 1990). *Black* at ¶ 26-27. The Fifth District did not, however, discuss what “party-state” means in the context of this statute. One important distinction between jails and prisons is the entity that operates such facilities. In Ohio jails are operated by counties and prisons are operated by the state. The Ohio Revised Code even recognizes this distinction between jails and prisons and the entity that operates such facilities. 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.” The IAD applies to persons serving terms of imprisonment in a facilities of a “party-state” not every facility operated by any political

subdivision. The Fifth District's holding that persons serving sentences in a county jail qualify as imprisoned in a facility of a "party-state" disregards the plain meaning of the words of the IAD and accompanying definitions of those terms found in Ohio law.

In a case directly on point to the present matter, *State v. Wyer*, 8th Dist. No. 82962, 2003-Ohio-6296, the Eighth District took up whether an inmate that is serving a jail sentence enjoys rights under the IAD. The Defendant in *Wyer* was serving a 12 month jail sentence in the Santa Clara, California county jail when he requested disposition of Cuyahoga County charges under the IAD. *Id.* at ¶ 4-5. The *Wyer* court emphatically stated the "IAD is clear that the term of imprisonment must be served in a penal or correctional institution of a party state" to invoke applicability of the IAD. *Id.* at ¶ 15. That court noted that the legislature chose not to include language "encompassing all correctional facilities," just state prisons. As such the Santa Clara county jail did not qualify as a correctional institution of the State of California. *Id.* at ¶ 15.

Throughout earlier proceedings in this matter, Appellee has maintained that the "widely accepted view" in the United States applies the IAD to inmates of county jails. Appellee pointed to an Arizona case, *Escalanti v. Superior Court*, and *Tennessee v. Lock* (1992), 839 S.W.2d 436, 444. Concededly, these cases support Appellee's position; however, other states have ruled that the IAD does not apply to persons in county jails. The Indiana Supreme Court has ruled that the IAD does not apply to county jail inmates stating "the act was intended to benefit persons serving time in prison." *Dorsey v. State* (1986), 490 N.E.2d 260, 264, *overruled on other grounds*. Likewise, the Supreme Court of Nevada ruled similarly and held that for IAD purposes there "is a significant distinction between jails and state prisons. *State v. Wade* (1995), 772 P.2d 1291, 1294. So while the Supreme Court of Nevada recognizes the difference between jails and prisons, the *Escalanti* decision, relied on by Fifth District in this matter, states "the only

difference between the state prison and the county jail for an incarcerated person is the sign on the building.” *Black* at ¶ 26 citing *Escalanti* at 387. The Fifth District relied on an out-of-state case that disregards the differences between a jail and a prison, differences that are codified in the Ohio Revised Code.

The Fifth District noted that the IAD should be “liberally construed so as to effectuate its purposes,” which include removing obstructions to prisoner treatment and securing the orderly and expeditious disposition of charges. *Id.* So while inmate interests in rehabilitation must be considered when determining the meaning of this statute, this does not mean that state and county considerations in orderly disposition of charges and even transportation of inmates is irrelevant. Transporting defendants to or from other states places a burden on counties in the State of Ohio. The Fifth District has expanded the amount of persons subject to transfer under the IAD from just inmates of party-state prison systems under *State v. Wyer* to all county jails in all party-states. Now a person in a county jail in Ohio can request transfer for disposition in a party-state across the country, and similarly persons in out-of-state county jails can request transfer to Ohio for disposition. This increase in the amount of defendants subject to transfer has the potential to burden counties, particularly smaller counties. The defendant in *State v. Wyer* was incarcerated in a Santa Clara, California county jail when he requested relief under the IAD. Under the Fifth District’s recent ruling, any county, regardless of the available resources or potential financial burden would have to arrange for the transfer of that defendant across the country from California.

CONCLUSION

Appellant ask that this Court rely on the plain meaning of the words of R.C. 2963.30 and properly decided cases from this jurisdiction and others in finding that the IAD does not apply to county jail inmates.

The judgment of the Fifth District Court of Appeals, therefore, should be overruled.

Respectfully submitted,



ANDREW N. BUSH
#0084402
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of the foregoing Brief of Appellee State of Ohio was sent to Attorney Dan Mason, legal counsel for Appellee, at 145 Westchester Drive, Amherst, Ohio 44001, by regular U.S. Mail postage prepaid, this 23rd day of July, 2013.



ANDREW N. BUSH
#0084402
Assistant Prosecuting Attorney

EXHIBIT A

FILED APPEALS COURT

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

2013 MAR 15 AM 9:1

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

RECEIVED

MAR 15 2013

Case No. 12-COA-018

OPINION

ASHLAND COUNTY PROSECUTOR

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."

{¶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, detainees 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.”

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

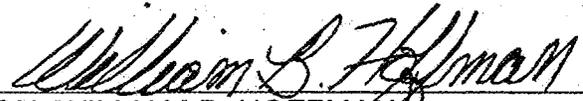
{¶29} The judgment of the Ashland County Court of Common Pleas is reversed.

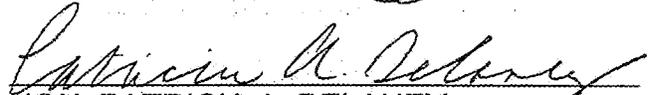
The matter is remanded to the trial court for further proceedings consistent with the law and this opinion.

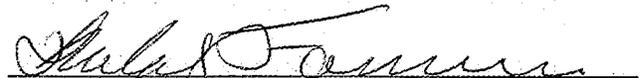
By: Hoffman, J.

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

STATE OF OHIO

Plaintiff-Appellee

-vs-

JAMES D. BLACK

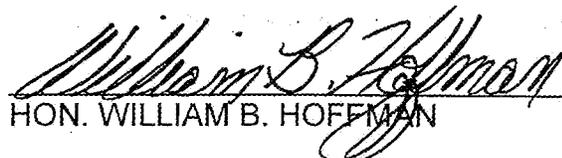
Defendant-Appellant

ANNETTE SHAW
CLERK OF COURTS
ASHLAND, OHIO

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.

EXHIBIT B

IN

Annette Shaw, Clerk of Courts

Annette Shaw
Clerk/Deputy Clerk

2-1-12
Date

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

Dennis Patten
Clerk/Deputy Clerk

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

2011 DEC -9 PM 3:29

Date 2-1-12 STATE OF OHIO,

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

Plaintiff,

vs.

JAMES D. BLACK,

JUDGMENT ENTRY

Defendant.

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 3:41
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

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 # 42 64

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

EXHIBIT E

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

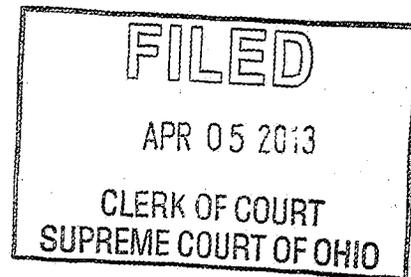
NOTICE OF APPEAL OF APPELLANT, STATE OF OHIO

Ramona J. Rogers (#0031149)
Ashland County Prosecuting Attorney
By: Andrew N. Bush (#0084402)
Assistant Prosecuting Attorney
110 Cottage Street, Third Floor
Ashland, Ohio 44805
(419) 289-8857
Fax No. (419) 281-3865

COUNSEL FOR APPELLANT, STATE OF OHIO

Daniel D. Mason
145 Westchester Drive
Amherst, Ohio 44001
(440) 759-1720

COUNSEL FOR APPELLEE, JAMES D. BLACK



Notice of Appeal of Appellant, State of Ohio

Appellant, State of Ohio, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Ashland County Court of Appeals, Fifth Appellate District, entered in Court of Appeals Case *State of Ohio v. James D. Black*, Case No. 12-COA-018, on March 15, 2013.

This case is one of public and great general interest.

Respectfully submitted,



ANDREW N. BUSH (#0084402)
Assistant Prosecuting Attorney
COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal of the Appellant - 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 30 day of April, 2013.



ANDREW N. BUSH (0084402)
Assistant Prosecuting Attorney

EXHIBIT F

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellant,

vs.

JAMES D. BLACK,

Appellee.

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

Case No. **13-0805**

Appellate No. 12-COA-018

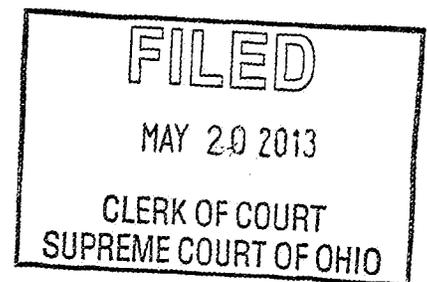
NOTICE OF CERTIFIED CONFLICT, STATE OF OHIO

Ramona J. Rogers (#0031149)
Ashland County Prosecuting Attorney
By: Andrew N. Bush (#0084402)
Assistant Prosecuting Attorney
110 Cottage Street, Third Floor
Ashland, Ohio 44805
(419) 289-8857
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COUNSEL FOR APPELLANT, STATE OF OHIO

Daniel D. Mason
145 Westchester Drive
Amherst, Ohio 44001
(440) 759-1720

COUNSEL FOR APPELLEE, JAMES D. BLACK



Notice of Certified Conflict of Appellant, State of Ohio

Appellant, State of Ohio, hereby gives notice of certified conflict to the Supreme Court of Ohio. The Fifth District Court of Appeals on April 26, 2013 certified that its judgment in *State v. James D. Black*, 5th Dist. No. 12-COA-018, 2013-Ohio-976 is in conflict with the Eighth District Court of Appeals' decision in *State v. Wyer*, 8th Dist. No. 82962, 2003-Ohio-6926.

Respectfully submitted,



ANDREW N. BUSH (#0084402)
Assistant Prosecuting Attorney
COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Certified Conflict of the Appellant - 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 14 day May, 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

RECEIVED

MAR 15 2013

Case No. 12-COA-018

OPINION

ASHLAND COUNTY PROSECUTOR

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.

{16} 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.

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

{18} 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.

{19} 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."

{¶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:

{¶125} "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.

{¶126} 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.*

{¶127} 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."

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

{¶29} 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.

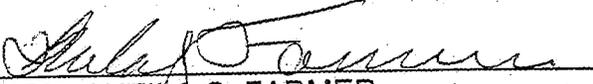
By: Hoffman, J.

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

STATE OF OHIO

Plaintiff-Appellee

-vs-

JAMES D. BLACK

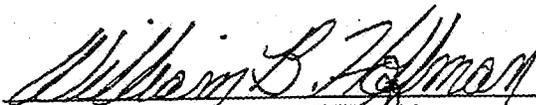
Defendant-Appellant

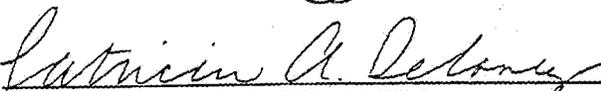
ANNETTE SHAW
CLERK OF COURTS
ASHLAND, OHIO

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

IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

2013 APR 26 AM 10:55

ANNETTE SHAW
CLERK OF COURTS
ASHLAND, OHIO

STATE OF OHIO

Plaintiff-Appellee

RECEIVED

APR 29 2013

JUDGMENT ENTRY

-vs-

JAMES D. BLACK

ASHLAND COUNTY PROSECUTOR

CASE NO. 12-COA-018

Defendant-Appellant

Plaintiff-appellee the state of Ohio has filed a motion to certify the decision entered in this case on March 15, 2013, *State v. Black*, 5th Dist. No.12-COA-018, 2013-Ohio-976, as being in conflict with the decision of the Eighth District Court of Appeals in *State v. Wyer*, 8th Dist. No. 82962, 2003-Ohio-6926.

Certification of a conflict is governed by Section 3(B)(4), Article IV of the Ohio Constitution, which provides: "[w]henver the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination."

Upon review, we find our decision to be in direct conflict with *Wyer*, supra.

The motion to certify is sustained.

Pursuant to App. R. 25(A), we certify the following issue of law to the Ohio

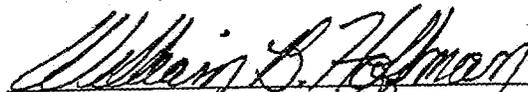
Supreme Court for review and final resolution:

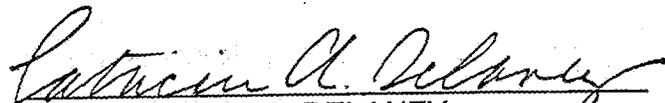
PA
Oplar
CPC
Jmason
COA

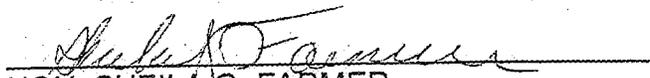
JM # 255 

Whether the term "penal or correctional institution of a party state" as used in R.C. 2963.30, includes county jails.

IT IS SO ORDERED.


HON. WILLIAM B. HOFFMAN


HON. PATRICIA A. DELANEY


HON. SHEILA G. FARMER

WBH/ag 4/11/13

JM # 256

Westlaw

Page 1

Not Reported in N.E.2d, 2003 WL 22976573 (Ohio App. 8 Dist.), 2003 -Ohio- 6926
(Cite as: 2003 WL 22976573 (Ohio App. 8 Dist.))

▷
CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.

Court of Appeals of Ohio,
Eighth District, Cuyahoga County.
STATE of Ohio, Plaintiff-Appellee
v.
Brian WYER, Defendant-Appellant.

No. 82962.
Decided Dec. 18, 2003.

Background: After his motion to dismiss charges was denied, defendant pled no contest in the Court of Common Pleas, Cuyahoga County, Nos. CR-419958 and CR-421664, to theft-related offenses, including burglary. Defendant appealed.

Holding: The Court of Appeals, Anthony O. Calabrese, Jr., J., held that out-of-state county jail in which defendant was incarcerated for unrelated offense was not a "correctional institution of a party state" under Interstate Agreement on Detainers (IAD) so as to trigger 180-day speedy trial requirement.

Affirmed.

West Headnotes

Extradition and Detainers 166  53.1

166 Extradition and Detainers

166II Detainers

166k53 Jurisdictions, Proceedings, Persons, and Offenses Involved

166k53.1 k. In General. Most Cited Cases

Out-of-state county jail in which defendant was incarcerated for unrelated offense was not a "correctional institution of a party state" under Interstate Agreement on Detainers (IAD) so as to afford defendant speedy trial disposition, or require

State to extradite defendant and bring him to trial within 180 days upon entering out-of-state jail; county jail was not recognized as state penal or correctional institution. U.S.C.A. Const.Amend. 6; R.C. 2963.30.

Criminal appeal from Common Pleas Court Case Nos. CR-419958, CR-421664. William D. Mason, Cuyahoga County Prosecutor, Mary McGrath, Assistant, Cleveland, OH, for plaintiff-appellee.

Carolyn Kaye Ranke, Cleveland, OH, for defendant-appellant.

ANTHONY O. CALABRESE, JR., J.

*1 {¶ 1} Defendant-appellant Brian Wyer ("appellant") appeals the denial of his motion to dismiss for violation of his speedy trial rights. For the reasons stated below, we affirm:

{¶ 2} I.

{¶ 3} On November 22, 2001, appellant was arrested in Cuyahoga County and charged with theft related offenses. On November 28, 2001, appellant was released on bond. Appellant was indicted on February 21, 2002 ^{FN1} and arraignment was set for February 25, 2002. Appellant failed to appear and a *capias* was issued for his arrest. Arraignment was reset for March 7, 2002. Following the appellant's failure to appear at the March 7, 2002 arraignment, a bond forfeiture *capias* was issued.

FN1. Cuyahoga County case No. CR-419958. This 14-count indictment alleged identity theft, theft, and receiving stolen property.

{¶ 4} On March 26, 2002, appellant was arrested on unrelated charges in Santa Jose, California. On or about March 28, 2002, a "complaint for return of fugitive of justice" was filed by Cuyahoga

Not Reported in N.E.2d, 2003 WL 22976573 (Ohio App. 8 Dist.), 2003 -Ohio- 6926
(Cite as: 2003 WL 22976573 (Ohio App. 8 Dist.))

County in the California municipal court, Santa Clara County, notifying appellant of the charges filed against him in Ohio. On April 5, 2002, appellant was again indicted by the Cuyahoga County grand jury for burglary.^{FN2} Appellant failed to appear at his arraignment and another *capias* was issued.

FN2. Cuyahoga County case No. CR-421664. Appellant purportedly entered into a former residence for the purpose of facilitating the crimes alleged in case number CR-419958.

{¶ 5} Appellant was eventually sentenced in California to a 12-month term of imprisonment. On July 2, 2002, appellant sent a written demand for final disposition of the outstanding charges against him in an effort to effectuate his extradition back to Cuyahoga County. On November 26, 2002, appellant was extradited and returned to Cuyahoga County. On December 12, 2002, appellant was arraigned and pled not guilty.

{¶ 6} On April 21, 2003, appellant's appointed counsel filed a motion to dismiss. On April 24, 2003, appellant's motion was denied and appellant entered pleas of no contest on both indictments.

{¶ 7} It is from the denial of his motion to dismiss that appellant advances two assignments of error for our review.

II

{¶ 8} In his first assignment of error, appellant argues that "the trial court erred in denying the defendant's motion to dismiss for failure to commence trial within 180 days as required by article III of the interstate agreement on detainees set forth in R.C. 2963.30." For the reasons stated below, we affirm.

{¶ 9} Appellant alleges that the specific time requirements outlined in the Interstate Agreement on Detainers, Article III ("IAD"), R.C. 2963.30, were not met. The IAD provides that:

"Whenever a person has entered upon a term

of imprisonment in a penal or correctional institution of a party state, and 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 detainee has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days." R.C. 2963.30.

{¶ 10} Because of this alleged failure, appellant argues his right to speedy trial was violated.

*2 {¶ 11} The state presents two arguments to the contrary: 1) that appellant was not incarcerated in a state penal institution, and therefore, his term of incarceration had not begun under IAD; and 2) even if appellant had begun his term of imprisonment, he failed to comply with the notice provisions of IAD and, therefore, cannot avail himself of the 180-day requirement.

{¶ 12} The state argues that IAD did not become applicable because appellant's term of incarceration in California was not within a "penal or correctional institution of a party state." Agreeing with this position, the trial court held that:

"Article III is clear that in order for a defendant to avail himself of the provision for speedy trial disposition, he must first be incarcerated in a *state* penal or correctional institution. If the legislative intent were to include both types of incarceration (i.e., local and state), the statute would have so read." (Emphasis in original.)

{¶ 13} Appellant argues that his entire term of imprisonment was to be served in the county jail. Therefore, the county jail served as the correctional institution of California for purposes of IAD.

{¶ 14} In support of its position, the state cites *State v. Schnitzler* (1998), Clermont Cty. case No. CA 98-01-008. In *Schnitzler*, the court held that "where a person is being temporarily held in a

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county jail and has not yet entered a state correctional institution to begin a term of imprisonment, Article III cannot be invoked." We agree.

{¶ 15} IAD is clear that the term of imprisonment must be served in a "penal or correctional institution of a party state." The legislature chose not to include language encompassing all correctional facilities, rather selecting only institutions of a "party state." We agree with the trial court in finding that the Santa Clara county jail is not a correctional institution of the State of California for purposes of IAD. The trial court did not err by finding that IAD is not applicable to the facts of this case.

{¶ 16} Having found that IAD is not applicable under the facts of this case, appellant's second assignment of error is moot.

{¶ 17} The judgment is affirmed.

Judgment affirmed.

PATRICIA A. BLACKMON, P.J., and FRANK D. CELEBREZZE, JR., J. concur.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of

the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

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END OF DOCUMENT

2963.30 Interstate agreement on detainers.

The Interstate Agreement on Detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein, in the form substantially as follows:

THE INTERSTATE AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

Article I

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. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

- (a) "State" shall mean a state of the United States[:]; the United States of America[:]; a territory or possession of the United States[:]; the District of Columbia[:]; the Commonwealth of Puerto Rico.
- (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.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and 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, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term

of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his rights to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request or [for] final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other officials having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. 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.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated:[,] provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and

transmitted the request:[,] and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, 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.

Article V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place of trial, whichever custodian arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer

has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction,[,] except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner,[,] the provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to

any person who is adjudged to be mentally ill, or who is under sentence of death.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any agreement, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Effective Date: 11-18-1969