

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,)	On Appeal from the Ashland
)	County Court of Appeals
)	
Appellant,)	Case No. 2013-0552 & 2013-0805
)	
-vs-)	Court of Appeals Case No.
)	12-COA-018
JAMES D. BLACK,)	
)	
Appellee.)	

MERIT BRIEF OF APPELLEE

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STATEMENT OF THE FACTS

In July of 2010, James Black became incarcerated in the State of Maryland. (February 3, 2012 Motion hearing transcript, p. 44; hereinafter “Tr.”) The authorities advised Mr. Black that there were three counties in Ohio that had issued detainers on him for pending charges. (Tr., p. 45) They were Franklin, Richland, and Ashland Counties. Mr. Black sent a handwritten “Notice of Availability” on January 27, 2011, to the Ashland County Court of Common Pleas while incarcerated but *prior* to his sentencing. The Ashland County Prosecutor’s Office responded to this notice that because Mr. Black was not serving a term of imprisonment in a state penal institution, his notice was premature to invoke the Interstate Agreement on Detainers (“IAD”). (Opinion of the Ashland County Court of Appeals, ¶3, Exh. A of Appellant’s Merit Brief)

On February 14, 2011, Mr. Black began serving a one-year sentence in the Cecil County Detention Center in Maryland. (Tr., pp. 46, 47) On or about March 4, 2011, Mr. Black this time filed a formal request under the Interstate Agreement on Detainers for prompt disposition of the charges against him by the three aforementioned counties in Ohio. (Tr., p. 47, and Exhibit C attached thereto, An Interstate Agreement on Detainers)

Defendant/Appellant Black made a plea in absentia to reduced, misdemeanor charges from Franklin County. (Tr., p. 48)

Although otherwise eligible for parole in August of 2011, the pending detainer in Ashland County made him ineligible for parole. (Id., pp. 50, 67) Moreover, the pending detainer made him ineligible for rehabilitative programs in his correctional institute. Specifically, he would have been eligible for community work and for rehabilitation for his addiction and mental health issues but for the detainer placed on him. (Id., pp. 50-51, 67)

Richland County acted on the request for disposition and transferred Mr. Black to Ohio. (Id., p. 51) He was there from May 27, 2011, until August 1, 2011. (Tr., p. 51) During this time period when he was resolving his Richland County charges, he again requested disposition by Ashland County. Availing itself of the IAD and Mr. Black's close proximity to Ashland County, on July 8, 2011, Ashland County had him transported to Ashland County for an arraignment hearing and then returned to Richland County. (Tr., p. 40) On July 18, 2011, the charges in Richland County were resolved. (Id., p. 52) After a couple of weeks waiting for Ashland County to continue to act upon its charges, Richland County transferred Mr. Black back to the Cecil County Detention Center in Maryland on August 1, 2011. (Id.)

The county facility in Maryland houses inmates with sentences up to three years in length and provides rehabilitation programs for inmates, such as counseling, classes, and work. (Id., p. 57) It also houses state inmates from the Maryland Department of Correction. (Tr., p. 61)

On September 11, 2011, Mr. Black's jail sentence ended in Maryland. He was later arrested in Medina County, Ohio, as a result of the detainer of Ashland County and transferred to Ashland County for disposition of the charges against him. (Appellant's Merit Brief, p.1)

A hearing was held on February 3, 2012, regarding the Motion to Dismiss of Defendant-Appellee James Black and his subsequently filed Amended Motion to Dismiss. Mr. Black sought to dismiss the case against him on the grounds that the trial of his case violated the 180-day and 120-day provisions of the Interstate Agreement on Detainers ("IAD") as codified in Ohio by R.C. §2963.30 and the single-transfer rule of that same law. The trial court took evidence at said hearing, a transcript of which is part of this record, and accepted briefing on the matter from the parties.

On February 14, 2012, the trial court issued its ruling denying the Motion to Dismiss and the Amended Motion to Dismiss. The trial court held:

The remaining pertinent facts in this case are, for the most part, generally agreed up[on]. 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 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. 2005 CAA02006, 2005-Ohio-6699.

See February 14, 2012 *Judgment Entry*, pp. 2-3, attached.

Defendant-Appellee, James Black, appealed the decision of the trial court's denial of his Motion to Dismiss and Amended Motion to Dismiss to the Court of Appeals of Ashland County, Fifth District Court of Appeals, arguing that he *is* entitled to the benefits of the IAD and that the trial court should have dismissed the charges against him as untimely under the IAD. The Fifth District Court of Appeals agreed, overturning the conviction. (Exh. A of Appellant's Merit Brief, ¶28)

This Court granted the State's request for jurisdiction and accepted this case as a certified conflict on the question whether the term "penal or correctional institution of a party state" as used in R.C. 2963.30 includes county jails.

LAW AND ARGUMENT

APPELLANT'S PROPOSITION OF LAW: 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.

APPELLEE'S COUNTER PROPOSITION OF LAW: R.C. 2963.30 applies to any penal or correctional institution where a person has begun a term of imprisonment whether it is part of a state correctional system or a local facility.

I. Standard for Review.

In determining whether the State has complied with the mandates of the Interstate Agreement on Detainers ("IAD"), the applicable standard of review requires a reviewing court to "independently determine, as a matter of law, whether the trial court erred in applying the substantive law to the facts of the case." *State v. Gill*, Cuyahoga App. No. 82742, 2004 Ohio 1245, at ¶8, quoting *State v. Williams* (1994), 94 Ohio App.3d 538, 641 N.E.2d 239.

II. Introduction and a Discussion of the Public Policy that Prompted our General Assembly to Enact the Interstate Agreement on Detainers.

Defendant filed a Motion to Dismiss and Amended Motion to Dismiss seeking dismissal of the charges against him on the basis of the violation of his right to a speedy trial and violation of the single-transfer rule of the IAD. Pursuant to Ohio Revised Code §2963.30, the citizens of foreign states are given certain rights to speedy trial in Ohio (and by reciprocity, Ohio citizens are given the same rights to speedy trial in foreign states). The State failed to follow R.C. §2963.30, which is also known as the Interstate Agreement on Detainers or IAD, when it failed

to prosecute Defendant within either the 180-day or 120-day time-limit provisions of this statute and its single-transfer rule.¹

After a hearing on the matter, the Trial Court overruled the motion. Defendant Black was later convicted of certain of the underlying charges. The Trial Court's failure to grant Defendant/Appellee's motion to dismiss was therefore prejudicial to him. It will be shown below that the Trial Court erred and that the Ashland County Court of Appeals was correct in reversing the decision of the Trial Court. It will be shown below that the language of the statute makes it clear that it applies anytime when "a person has entered upon a term of imprisonment in a penal or correctional institution" located in a state that is party to the IAD.

There is no need for any in-depth discussion or research on the intent of our legislature for enacting the IAD. The statute itself sets forth its purpose:

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, 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

¹ R.C. 2963.30, Article III and Article IV, respectively. We ask the Court to note that this Revised Code section is unusual in that it is subdivided into "Articles". This is obviously because it was copied from the pattern law and intended to be consistent with the same law in 48 other states, the federal government, and the District of Columbia, all of which have adopted the IAD in order to consistently apply the remedial effects of this law.

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. It prevented him from receiving rehabilitation. (Tr., pp. 50-51, 67) He therefore asked the three counties of Ohio holding detainers to prosecute him. Of course, he did this through the Interstate Agreement on Detainers.

III. Appellee failed to bring Mr. Black to trial in a timely manner which requires dismissal of the charges against him under Revised Code §2963.30, the Interstate Agreement on Detainers.

Article III(a) of Revised Code §2963.30, the Interstate Agreement on Detainers, required Ashland County to bring Defendant/Appellee 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 trial court herein should have granted the Motion to Dismiss with prejudice instead of allowing Ashland County to continue its prosecution.

Plaintiff-Appellant does not dispute that Appellant-Defendant Black's trial was outside the 180-day limit of Article III(a) or the 120-day provision of Article IV. Plaintiff-Appellant

also does not dispute that it violated the single-transfer rule of Article III(d). Instead, Appellant claims that R.C. §2963.30 does not apply to this case *at all* 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 stating or implying 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 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. We will therefore be citing authorities from other jurisdictions for guidance of this model law.

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 “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 whom 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. (Tr., pp. 50-51, 67) He was denied that opportunity because of the detainers against him. (Id.) 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) Unfortunately, Ohio does not have a definitional section in its version of the IAD to specify that the term “penal or correctional institution” means that the IAD only applies to certain types of prisons or jails. Perhaps this silence should be interpreted as suggesting that the General Assembly did not intend to put a limitation on the applicability of the IAD. If this silence does indeed create ambiguity – and we do not think that is the case – any ambiguity must be construed in favor of the remedial purpose of this statute. In other words, the statute’s silence on any limitations of its applicability only to state-operated prisons or only to county-owned jails means that this “ambiguity” should be construed as meaning the statute applies to *all* “penal or correctional institutions” where a prisoner is serving a “term of imprisonment”. Although the Appellant is trying to insert a distinction between prisons and jails, it should be pointed out that R.C. 2963.30 does not use those terms or make any such distinction. It appears to be a distinction created by those who wish to limit the applicability of the IAD.

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. Nobody who has supported this opinion – including the Appellant herein – has been able to explain why this distinction should be made by the General Assembly or the legislature of any party to the IAD. In fact, the one Ohio appellate court that has accepted this artificial distinction did not explain why or even ask the question “why” the General Assembly would make this 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 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 a 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 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, only between the states themselves. 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 stated purpose of benefitting the rehabilitation process of inmates.

The Appellant in the courts below relied on the isolated phrase “of a party state” to support its position that the prisoner must be in a correctional facility 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, i.e., institutions in states that are not party to this interstate compact. 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.

The courts of other states that examine this question with any depth generally agree that the IAD applies to any facility where a person is held for a "term of imprisonment". For example, the appellate court in *People v. Walton* (2007), 167 P.3d 163, 166, examined the issue herein and held:

Moreover, construing "penal or correctional institutions" to include jails as well as prisons is consistent with the purpose of the IAD, which is to encourage the expeditious disposition of untried charges because such charges obstruct programs of prisoner treatment and rehabilitation. See § 24-60-501, art. I. In some states, defendants may be ordered to serve sentences in either a prison or a jail, and the jails in some jurisdictions offer rehabilitative programs just as prisons sometimes do. See *Escalanti v. Superior Court*, 165 Ariz. 385, 799 P.2d 5, 7-9 (Ariz. Ct. App. 1990); *State v. Lock*, 839 S.W.2d 436, 444 (Tenn. Crim. App. 1992).

Thus, many courts that have addressed this issue have concluded that to apply the IAD only to inmates ordered to serve sentences in facilities

designated as "prisons" rather than jails would frustrate the rehabilitative purposes of the IAD. See *Escalanit v. Superior Court*, *supra*, 799 P.2d at 8-9; *Felix v. United States*, *supra*, 508 A.2d at 105-06; *State v. Lock*, *supra*, 839 S.W.2d at 444. The courts that have held to the contrary have done so under the assumption that jails either provide no rehabilitation programs or function only as temporary holding facilities. See *State v. Wade*, *supra*, 772 P.2d at 1294 (assuming that rehabilitation programs do not exist in jails); *State v. Breen*, 126 Idaho 305, 882 P.2d 472, 474-75 (Idaho 1994) (same); *State v. Fay*, 763 So. 2d 473, 476 (Fla. Dist. Ct. App. 2000) (assuming that rehabilitative programs in jails will necessarily be disrupted anyway because court assumed that jails are only temporary holding facilities).

The appellate court in *People v. Walton* recognized that those states that held the IAD did not apply to county jails did so because of an assumption that county jails do not provide rehabilitative programs or are merely temporary holding facilities. But, while that may be true in some states, it is not true in Ohio or Maryland.

While paying lip service to the express intent of the statute that it should be liberally construed to effectuate its purpose of removing obstructions to prisoner rehabilitation and securing the orderly and efficient disposition of charges, the Appellant State proffers its own reasoning behind the statute. The State suggests that this Court should construe the statute so that there will be less prisoners transferring and, the argument goes, less cost on the receiving counties who must pay for the extradition and the housing of prisoners. The argument fails, and not just because it was not mentioned as a purpose of the statute.

The statute was designed to create an expeditious disposition of charges and prevent what has been called shuttling or shuffling of prisoners from jurisdiction to jurisdiction, which obviously is an inefficient way of handling outstanding detainees. *Runck v. State* (1993), 497 N.W. 2d 74, 78 (the IAD should be liberally construed to effectuate its purpose of rehabilitation for all prisoners who are not temporary detainees). The successful rehabilitation of prisoners

will result in less crime, less recidivism, and fewer prisoners, which will save taxpayer money in the long run. The State's argument that money will be saved is short sighted.

Moreover, money will not be saved. If a county has an outstanding detainer, then the transfer from the sister-state facility will still occur but at the end of the prisoner's term. The cost of transfer or extradition and prisoner housing will still arise, just later.

Finally, we should point out the obvious. If the county cannot afford the transfer or afford housing the prisoner, then it should not maintain its detainer. Outstanding detainers have a punitive effect on prisoners who might otherwise receive rehabilitation or desire the ordered and expeditious disposition of their charges. It would be against the IAD's purpose to allow these detainers to linger. A county should drop them if it cannot afford the transfer and housing costs.

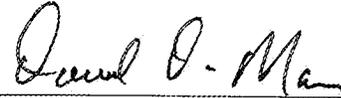
Clearly, the state's policy argument not only runs contrary to the stated purpose of the statute but also is unsupportable on its own merits. Carrying out the purpose of the IAD will *save* taxpayer money.

We should also point out that the State violated the IAD in this case through inadvertence and not because of cost. Mr. Black requested transfer to Ohio to resolve the detainers. Richland County brought him to Ohio. Ashland County *availed itself* of the benefits of the IAD when it accepted Mr. Black into Ashland County where it arraigned him before returning him to Richland County. (Tr., p. 40) On July 18, 2011, the charges in Richland County were resolved. (Id., p. 52) After a couple of weeks waiting for Ashland County to continue to act upon its charges, Richland County transferred Mr. Black back to the Cecil County Detention Center in Maryland on August 1, 2011. (Id.) Ashland County was obtaining the benefit of the IAD by accepting Mr. Black and prosecuting him, but when it failed to follow the IAD's one-transfer

rule, now Ashland County is using a fallacious “save money” argument to deny the IAD’s applicability to the circumstances of this case.

CONCLUSION

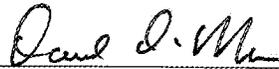
If the IAD applies to Appellee’s case, then it is undisputed that the Appellant failed to prosecute the Defendant Black within the 180-day and 120-day time frames of the IAD and undisputed that the single-transfer rule of the IAD was violated. A proper and consistent interpretation of the IAD will carry out its statutory purpose that it should apply to Appellee Black in the case at bar. The Court should effectuate the statute’s purpose and uphold the appellate court’s reversal of the trial court’s decision, which ordered the trial court to grant the Amended Motion to Dismiss with prejudice.



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PROOF OF SERVICE

I sent a copy of this Merit Brief of Appellee on the 23rd day of August 2013, to Attorney for the State of Ohio, Ramona Francesconi-Rogers, Ashland County Prosecutor, by Attorney Andrew Bush, 110 Cottage Street, Ashland Ohio 44805.



Daniel D. Mason, Attorney for Appellee