

NO. 288927-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

FILED

SEP 10 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

---

THE STATE OF WASHINGTON, Appellant,

v.

WALLACE JOSEPH GRIFFITH, Respondent.

---

APPEAL FROM THE SUPERIOR COURT  
FOR BENTON COUNTY

NO. 288927

---

BRIEF OF APPELLANT

---

ANDY MILLER  
Prosecuting Attorney  
for Benton County

TERRY J. BLOOR, Deputy  
Prosecuting Attorney  
BAR NO. 9044  
OFFICE ID 91004

7122 West Okanogan Place  
Bldg. A  
Kennewick WA 99336  
(509) 735-3591

NO. 288927-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

FILED

SEP 10 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

---

THE STATE OF WASHINGTON, Appellant,

v.

WALLACE JOSEPH GRIFFITH, Respondent.

---

APPEAL FROM THE SUPERIOR COURT  
FOR BENTON COUNTY

NO. 288927

---

BRIEF OF APPELLANT

---

ANDY MILLER  
Prosecuting Attorney  
for Benton County

TERRY J. BLOOR, Deputy  
Prosecuting Attorney  
BAR NO. 9044  
OFFICE ID 91004

7122 West Okanogan Place  
Bldg. A  
Kennewick WA 99336  
(509) 735-3591

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... vi

ASSIGNMENTS OF ERROR ..... 1

1. The court erred by entering Conclusion of Law No. Two, that the Interstate Agreement on Detainers, rather than the Uniform Criminal Extradition Act, was applicable. .... 1

2. The court further erred in Conclusion of Law No. Two, that "the State had a duty to file a detainer pursuant to the Interstate Agreement on Detainers in October, 1996 and/or March, 2002." ..... 1

3. The Court erred by entering Conclusion of Law No. Three, that "[t]he defendant was not required to cause delivery to the Benton County Prosecuting Attorney written notice of the place of his imprisonment and his request for a final decision to be made of the Information." ..... 1

4. The court erred by entering Conclusion of Law No. Four, that the length of the delay from 1996 and/or 2002 to the present prejudices the defendant in the defense of the case. .... 1

5. The court further erred in Conclusion of Law No. Four, that the delay was sufficient cause for dismissal. .... 1

ISSUES ..... 2

1. What is the standard on review? ..... 2

2.	Is the Uniform Criminal Extradition Act (Extradition Act) or the Interstate Agreement on Detainers (IAD) applicable in this case? .....	2
A.	Is there any substantive difference between the two acts? .....	2
B.	Does the IAD apply?.....	2
1)	Had the defendant "entered upon a term of imprisonment in a penal or correction institution of a party state"?	2
2)	Does the IAD apply to county jail inmates? .....	2
3.	If the State was required to pursue rendition of the defendant via the IAD, was the State required to file a detainer against the defendant? .....	2
A.	Had the defendant "entered upon a term of imprisonment" in:	
1)	1996; .....	2
2)	2002; .....	2
3)	2006? .....	2
B.	Is the State required by considerations of good faith and due diligence to place a detainer on an inmate once it has learned that the defendant is in a jail or prison outside the state? .....	3
C.	Did the State fail to act in good faith or with due diligence? .....	3

D.	Did the defendant have any duty to request a final disposition and provide a written notice of his place of imprisonment to the State? .....	3
4.	Should the court have dismissed the case due to any actual prejudice to the defendant? .....	3
A.	Should the court dismiss a case based solely on the length of the delay between the date the Information was filed and the date that the defendant was extradited to Washington? .....	3
B.	Even if there was evidence of prejudice, was it sufficient cause to dismiss the case? .....	3
	STATEMENT OF THE CASE .....	3
	ARGUMENT .....	10
1.	The standard on review is de novo .....	11
2.	The trial court incorrectly held that the State was required to pursue rendition of the defendant via the Interstate Agreement on Detainers (IAD), rather than the Uniform Criminal Extradition Act (Extradition) in 1996 and/or 2002. ....	12
A.	The importance of the distinction between the IAD and the Extradition Act .....	12
B.	The IAD does not apply. ....	13

1)	The defendant was not "serving a term of imprisonment" at the key times. ....	13
2)	The IAD does not apply to county jail inmates. ....	15
3.	Even if the IAD rather than the Uniform Criminal Extradition Act was applicable, the State was not required to file a detainer. ....	17
A.	The State could not have filed a detainer on the defendant because he had never "entered upon a term of imprisonment." ....	17
1)	October 1996, Riverside, California .....	17
2)	March 2002, Truckee, Nevada County, CA .....	18
3)	June 2006, Orange County, CA ....	22
B.	With the 2003 change in the time for trial rule, the State need not demonstrate due diligence in procuring the defendant's presence at trial .....	22
C.	The State did exercise good faith and due diligence. ....	28
D.	The trial court further erred in holding that the defendant had no duty under the IAD to request final disposition. ....	29

4. In any event, even ignoring the above arguments, the trial court erred in concluding that dismissal was appropriate. .... 32

CONCLUSION ..... 37

APPENDIX A  
FLOW CHART OF TRIAL COURT DECISIONS ..... 39

**TABLE OF AUTHORITIES**

**WASHINGTON CASES**

*Hystad v. Rhay*,  
12 Wn. App. 872, 533 P.2d 409 (1975) ..... 13

*State v. Alter*,  
67 Wn.2d 111, 406 P.2d 765 (1965) ..... 33

*State v. Anderson*,  
121 Wn.2d 852, 855 P.2d 671 (1993) .. 22-24, 27, 29

*State v. Castillo*,  
129 Wn. App. 828, 120 P.3d 137 (2005) ..... 27

*State v. George*,  
160 Wn.2d 727, 738, 158 P.3d 1169 (2007) ..... 27

*State v. Greenwood*,  
120 Wn.2d 585, 845 P.2d 971 (1993) ..... 24, 26

*State v. Iniquez*,  
167 Wn.2d 273, 217 P.3d 768 (2009) ..... 32-35

*State v. Olmos*,  
129 Wn. App. 750, 120 P.3d 139 (2005) ..... 26, 32

*State v. Roberson*,  
78 Wn. App. 600, 897 P.2d 443 (1995) ... 11, 12, 31

*State v. Striker*,  
87 Wn.2d 870, 557 P.2d 847 (1976) ..... 24, 26

*State v. Welker*,  
157 Wn.2d 557, 141 P.3d 8 (2006) . 16, 22-24, 29-32

*State v. Wilson*,  
41 Wn. App. 397, 704 P.2d 1217 (1985) ..... 19

**OTHER JURISDICTIONS**

*Aycox v. Lytle*,  
196 F.3d 1174 (C.A. 10 (N.M.),1999) ..... 12

*Brewer v. State*,  
128 Idaho 340, 913 P.2d 73 (1996) ..... 17

*Crooker v. U.S.*,  
814 F.2d 75 (C.A.1 (Mass.), 1987) ..... 17

*Moody v. Corsentino*,  
843 P.2d 1355 (Colo. 1993) ..... 12

*People v. Zetsche*,  
188 Cal. App.3rd 917, 233 Cal. Rptr. 720(1987) . 21

*Russo v. Johnson*,  
129 F. Supp.2d. 1012 (S.D. Tex., 2001) ..... 12

*State v. Batungbacal*,  
81 Hawaii 123, 913 P.2d 49(HI 1996) ..... 30

*State v. Fay*,  
763 So.2d 473 (Fla.App. 4 Dist.,2000) ..... 21

*State v. Stewart*,  
266 Mont. 525, 881 P.2d 629 (Mont. 1994) ..... 30

*State v. Wade*,  
105 Nev. 206, 772 P.2d 1291 (1989) ..... 17

*U.S. v. Dobson*,  
585 F.2d 55, 58-59 (C.A.Pa.,1978) ..... 19, 20

*U.S. v. Reed*,  
910 F.2d 621 (C.A.9 (Or.), 1990) ..... 11

*U.S. v. Roberts*,  
548 F.2d 665, 670-671 (C.A.Mich. 1977) ..... 20, 21

**OTHER JURISDICTIONS - CONTINUED**

*U.S. v. Taylor*,  
173 F.3d 538 (C.A.6 (Tenn.),1999) ..... 21

**WASHINGTON STATUTES**

RCW 9.100.010 ..... 13, 14, 17, 31

**REGULATIONS AND COURT RULES**

CrR 2.1(a)(3) ..... 26  
CrR 3.3 ..... 23, 24  
CrR 3.3(a)(4) ..... 25  
CrR 3.3(h) ..... 25, 26  
CrR 4.1 ..... 25, 26

**OTHER**

Time-For-Trial Task Force,  
Final Report II. B. ..... 24-25

#### ASSIGNMENTS OF ERROR

1. The court erred by entering Conclusion of Law No. Two, that the Interstate Agreement on Detainers, rather than the Uniform Criminal Extradition Act, was applicable. (CP 101).
2. The court further erred in Conclusion of Law No. Two, that "the State had a duty to file a detainer pursuant to the Interstate Agreement on Detainers in October, 1996 and/or March 2002." (CP 101).
3. The Court erred by entering Conclusion of Law No. Three, that "[t]he defendant was not required to cause delivery to the Benton County Prosecuting Attorney written notice of the place of his imprisonment and his request for a final decision to be made of the Information." (CP 101).
4. The court erred by entering Conclusion of Law No. Four, that the length of the delay from 1996 and/or 2002 to the present prejudices the defendant in the defense of the case. (CP 101).
5. The court further erred in Conclusion of Law No. Four, that the delay was sufficient cause for dismissal. (CP 101).

## ISSUES

1. What is the standard on review?
2. Is the Uniform Criminal Extradition Act (Extradition Act) or the Interstate Agreement on Detainers (IAD) applicable in this case?
  - A. Is there any substantive difference between the two acts?
  - B. Does the IAD apply?
    - 1) Had the defendant "entered upon a term of imprisonment in a penal or correction institution of a party state"?
    - 2) Does the IAD apply to county jail inmates?
3. If the State was required to pursue rendition of the defendant via the IAD, was the State required to file a detainer against the defendant?
  - A. Had the defendant "entered upon a term of imprisonment" in:
    - 1) 1996;
    - 2) 2002;
    - 3) 2006?

- B. Is the State required by considerations of good faith and due diligence to place a detainer on an inmate once it has learned that the defendant is in a jail or prison outside the state?
  - C. Did the State fail to act in good faith or with due diligence?
  - D. Did the defendant have any duty to request a final disposition and provide a written notice of his place of imprisonment to the State?
4. Should the court have dismissed the case due to any actual prejudice to the defendant?
- A. Should the court dismiss a case based solely on the length of the delay between the date the Information was filed and the date that the defendant was extradited to Washington?
  - B. Even if there was evidence of prejudice, was it sufficient cause to dismiss the case?

#### STATEMENT OF FACTS

The following is the timeline of key events:

**June 26, 1996:** The Information is filed, alleging that the defendant committed the crime of Child Molestation in the Third Degree, between

May to December 1995, against K.J. (CP 1, 99). A warrant for the defendant was issued, to be served in Washington or Oregon, with bail set at \$5,000.00. (CP 4, 99).

**October 10, 1996:** The Benton County Prosecutor's Office received the following report from the Richland, Washington Police Department:

On October 10, 1996, at 0100 hours, I was asked to confirm a warrant on Griffith. I confirmed the warrant and contacted Riverside County Sheriff's Office. They had contacted Griffith as a suspicious person and located the felony warrant.

I advised them the warrant was still in effect, but it was not extraditable from California. They provided me with Griffith's current address.

(CP 99, 104).

A handwritten note is on this report, stating, "Margaret (referring to office administrator Margaret Ault), how much would this cost?" (CP 99). This was a reference to how much money it would cost to extradite the defendant from California and was written by Benton County Prosecutor, Andy Miller. (CP 100, 104).

**October 16, 1996:** Ms. Ault responded to Mr. Miller's inquiry, with a memo stating:

I called Tri County Extradition Services. They will transport from Riverside [California] to Medford [Oregon] for \$605.28.

If you want me to get in touch with RPD, I will need to know the standard range and what our recommendation will be.

(CP 75, 100).

In response, Mr. Miller wrote the following by hand on the memo:

10-16-96

T/C [telephone call] w/ victim's mother. We both agreed we wanted to keep warrant to make sure he stays away from Washington and therefore victim. However, no need to bring him up here and put victim through trial and possibly causing recontact.

[Victim's mother] will call if any new developments.

AM. [Andy Miller]

(CP 75, 100).

**January 7, 2002:** The Benton County Prosecuting Attorney's Office had an inquiry on the case from Child Protective Services, as noted by another handwritten memo:

CPS contacted me indicating they might be able to track him. I read him AM's notes of 10-16-96 & PC--He said if he was able to contact def-he would advice warrant was unextraditable & that should keep him away.

Mpa [Margaret P. Ault].

(CP 75, 100).

**March 27, 2002:** Victim/Witness advocate Ms. Arnold types in the prosecution file, "3-27-02 Def. was arrested in Calif. Called mom. She and her daughter don't want it pursued. [K.J.] is starting college at Eastern in the fall." (CP 100).

Also, on this date Ms. Ault sent the following note to Mr. Miller:

Det. Rose from Truckee, California called. She would like to talk to someone about this case. Her number is 530-550-2336.

I will call her back if you wish - I just wanted to make sure your notes in the file still stand.

Mpa [Margaret P. Ault].

(CP 74, 100).

**April 8, 2002:** A charge of a felony theft was filed in Truckee, Nevada County, California. (CP 32).

**June 18, 2002:** The defendant pleads "no contest" on this charge to a misdemeanor. (CP 37). He is sentenced to one day in jail, with one day credit for time previously served. (CP 39).

**June 27, 2006:** The defendant is arrested in Orange County, California on a felony. (CP 62).

**June 30, 2006:** The defendant pleads guilty to the Orange County, California charge and is released from custody. (CP 63).

**January 17, 2007:** The defendant fails to appear at a hearing concerning his probation on the Orange County case and a warrant is issued. (CP 65).

**July 28, 2009:** The defendant was arrested in Orange County, California on the warrant issued for the probation violation. (CP 66, 100).

**July 29, 2009:** The deputy prosecutor in Orange County, California informed the deputy prosecutor in Benton County, Washington that the defendant had been arrested.

**August 5, 2009:** Detective Jeff Taylor of the Richland Police Department contacted K.J., now K.A. He reports that Ms. J-A is emotionally willing and able to testify. (CP 101).

**August 7, 2009:** The State files an Amended Arraignment Warrant, increasing the bail to \$50,000.00 and providing for extradition anywhere in the nation. (CP 7, 101).

**August 21, 2009:** The defendant is released from custody on the probation violation in California. He is held pursuant to the Arraignment Warrant herein. (CP 101).

**August 24, 2009:** The State files an Application for Requisition by the Governor of Washington to the Governor of California. (CP 87-88, 101).

**September 3, 2009:** The defendant waived extradition from California to Washington. (CP 84).

**September 18, 2009:** The defendant appeared in the Benton County Superior Court on the charge herein. (CP 12-13).

**September 23, 2009:** The defendant was arraigned on the Information. (CP 13-15).

**November 4, 2009:** The defendant waives his time for trial right under CrR 3.3, resetting the trial to December 14, 2009. (CP 114).

**January 27, 2010:** The defendant waives his time for trial right under CrR 3.3, resetting the trial to March 1, 2010. (CP 115).

**February 17, 2010:** The defendant files a Motion to Dismiss with Prejudice and Memorandum of Support Thereof. (CP 19-68). (The defendant filed a similar motion on October 28, 2009, but apparently wanted to acquire the attachments in the February 17, 2010 before proceeding. (CP 16-18).

**March 9, 2010:** After hearing argument, the trial court granted the motion to dismiss, holding that the State had a duty to file a

detainer pursuant to the Interstate Agreement on Detainers in October 1996, and/or March 2002. (CP 98; 03/09/10,RP 18-19).

**March 19, 2010:** The trial court entered Findings of Fact and Conclusions of Law. (CP 99-108).

This appeal followed. (CP 109-110).

#### **ARGUMENT**

The State argues that the trial court made a series of errors resulting in the conclusion that the case should be dismissed.<sup>1</sup> A change in any of the trial court's decisions would have resulted in a different outcome. First, the trial court concluded incorrectly that the Interstate Detainer Act rather than the Extradition Act should apply. Then the trial court incorrectly concluded that the State was required to file a detainer against the defendant as a matter of good faith and due diligence. The trial court

---

<sup>1</sup> Please see Appendix A, "Flow Chart of Trial Court Decisions."

further incorrectly concluded that the defendant had no obligations under the IAD (if it applied). The trial court continued by incorrectly concluding that in 1996 and 2002, the State failed to act in good faith. Finally, the trial court incorrectly concluded that the defendant's constitutional speedy trial rights were violated, based solely on the length of time which had elapsed and without consideration of the fact that the defendant had eluded Washington State authorities for almost 14 years,

**1. The standard on review is de novo.**

Whether the State or the prisoner have met the standards of the IADA is a mixed question of law and fact. Such questions are reviewed de novo. *U.S. v. Reed*, 910 F.2d 621, 624 (C.A.9 (Or.), 1990). Further, the IAD is a congressionally sanctioned interstate compact, the interpretation of which presents questions of federal law. *State v. Roberson*, 78 Wn. App. 600, 897 P.2d 443 (1995).

2. The trial court incorrectly held that the State was required to pursue rendition of the defendant via the Interstate Agreement on Detainers (IAD), rather than the Uniform Criminal Extradition Act (Extradition) in 1996 and/or 2002.

A. The importance of the distinction between the IAD and the Extradition Act

The importance of the distinction is that under the Extradition Act, the decision to extradite is within the discretion of the state where the crime was committed. There is no constitutional or statutory duty to seek extradition. *Moody v. Corsentino*, 843 P.2d 1355 (Colo., 1993); *Aycox v. Lytle*, 196 F.3d 1174 (C.A. 10 (N.M.), 1999); *Russo v. Johnson*, 129 F. Supp.2d. 1012 (S.D. Tex., 2001). In contrast, under the IAD, **if** a detainer has been filed for the defendant **and if** the defendant properly requested resolution of the case, the requesting State must bring the defendant to trial within 180 days.

**B. The IAD does not apply.**

- 1) The defendant was not "serving a term of imprisonment" at the key times.

The IAD is designed to facilitate the transfer of a prisoner in State A into the temporary custody of State B, for the purpose of trying him in State B on an outstanding Information, and then returning him to State A. The Extradition Act applies for defendants who are not serving a sentence in State A, and therefore, will not have to return to State A. *Hystad v. Rhay*, 12 Wn. App. 872, 880, 533 P.2d 409 (1975). This is clear from several provisions in the IAD. See RCW 9.100.010, Article III (a):

Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and ... there is pending in any other party state any untried ... information ... 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 ... written notice of

the place of his imprisonment and his request for final disposition.  
RCW 9.100.010 (Emphasis added).

Also, see RCW 9.100.010 Article V (e), "At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state."

A key purpose of the IAD is to allow prisoners to resolve outstanding warrants in State B, so they may pursue "programs of prisoner treatment and rehabilitation" in State A. RCW 9.100.010, Article I.

Turning to this case, the IAD does not apply based on both the goal of the IAD (to allow prisoners to participate in rehabilitation programs) and its specific terms (a person serving a term of imprisonment). Consider both time periods for which the trial court was critical of the State.

In 2002, in Truckee, Nevada County, California, the defendant served a grand total of one day in jail, which he had credit for when

sentenced. (CP 39). There is nothing in the record showing that the defendant was arrested, much less served a jail sentence in Riverside, California as a result of the "suspicious person" report on October 10, 1996. (CP 104). If he did, no one notified the Benton County Prosecuting Attorney's Office.

The trial court faulted the State for not implementing the IAD on these two occasions. The purpose of the IAD is to prevent detainees remaining lodged against a prisoner for long periods of time without resolution of the underlying charge. *State v. Roberson*, 78 Wn. App. 600, 897 P.2d 443 (1995). The one day that defendant served prior to his sentencing could not be considered a long period of time. Further, the State did nothing to stop the defendant from any "treatment and rehabilitation programs" available during that day. Considering the plain language and the purpose of the IAD, it was not applicable in this case.

The trial court incorrectly concluded that the IAD, rather than the Extradition Act applied, which began a series of incorrect conclusions of law. Because of this initial conclusion, that the IAD rather than the Extradition Act applied, the trial court's decision should be reversed. However, as discussed below, even assuming that the IAD applied, the trial court's decision was in error.

**2) The IAD does not apply to county jail inmates.**

*State v. Welker*, 157 Wn.2d 557, 141 P.3d 8 (2006) states in a footnote that courts are split on whether the IAD applies to jail inmates. See *Welker*, 157 Wn.2d at 567, FN 6. The Court in *Welker* did not resolve this dispute. Nevertheless, by its terms, the IAD appears inapplicable to sentenced **jail** inmates because a county jail is not a "penal or correctional institution of a state." The goals of the IAD are not promoted by applying it to a person serving a relatively short term in a local jail.

Many other states have held that the IAD does not apply to county jail inmates. See e.g., *Brewer v. State*, 128 Idaho 340, 913 P.2d 73 (1996); *Crooker v. U.S.*, 814 F.2d 75 (C.A.1 (Mass.), 1987); *State v. Wade*, 105 Nev. 206, 772 P.2d 1291 (1989).

**3. Even if the IAD rather than the Uniform Criminal Extradition Act was applicable, the State was not required to file a detainer.**

**A. The State could not have filed a detainer on the defendant because he had never "entered upon a term of imprisonment."**

As cited above, the IAD applies only to those prisoners who have "entered upon a term of imprisonment in a penal or correctional institution of a party state." RCW 9.100.010. The State had no information that the defendant "entered upon a term of imprisonment."

**1) October 1996, Riverside, California**

The Benton County Prosecuting Attorney's Office had no information that the defendant was arrested, convicted, or sentenced as a result of the "suspicious person" report on October 10,

1996, in Riverside, California. The defendant produced no records showing he was charged, convicted, or sentenced pursuant to this report.

**2) March 2002, Truckee, Nevada  
County, CA**

Regarding the 2002 matter in Truckee, Nevada County, California, the Benton County Prosecuting Attorney's Office knew that the defendant had been arrested on March 27, 2002. However, that Office did not know that the defendant was charged with a felony on March 8, 2002, or that he plead guilty to a reduced charge on June 18, 2002. On June 18, 2002, the defendant was sentenced to one day in jail, which he had previously served. (CP 39). Therefore, even if the Benton County Prosecuting Attorney was aware that the defendant had been charged with a crime, the defendant never thereafter entered into a "term of imprisonment."

The State did not have any opportunity to file a detainer.

The State cites three cases which are instructive. First, in *State v. Wilson*, 41 Wn. App. 397, 704 P.2d 1217 (1985), Washington State tried a defendant who was subject to a federal sentence, but had not yet been transferred to a federal prison. The Court held that the IAD did not apply because the defendant had not yet started his sentence.

The second case, *U.S. v. Dobson*, 585 F.2d 55, 58-59 (C.A.Pa., 1978), dealt with the applicability of the IAD to an inmate awaiting sentencing on a probation violation:

It seems clear to us that the natural meaning of the phrase "serving a term of imprisonment" denotes no more or less than that definable period of time during which a prisoner must be confined in order to complete or satisfy the prison term or sentence which has been ordered. Thus, the very words of the statute would appear to exclude those held in custody for periods of time which are not defined in terms of duration, which are not certain, and which do not follow a conviction or determination of parole revocation. Hence, even though we recognize that the basis for a parolee's detention is the underlying sentence from which he has been

paroled, until such time that the parole violator is recommitted after a hearing, and his incarceration thereby made certain and fixed as to duration, no term of imprisonment can be said to have commenced or resumed. In this respect a parole violator is no different than a pretrial detainee who is merely awaiting trial and who, until conviction and sentencing, cannot commence service of a term of imprisonment.

Indeed, until conviction at trial and the imposition of a sentence, the length of the pretrial detainee's confinement is uncertain. So too, until a parole revocation hearing has been held, and the parole violator's parole is revoked and he is recommitted, his status with respect to confinement is similarly uncertain. In short, just as pretrial incarceration is a transitory and impermanent state, incarceration pursuant to a parole violation warrant is just as transitory and impermanent. Both place the prisoner in no more than a "holding pattern."

*U.S. v. Dobson*, 585 F.2d at 58-59.

The third case, *U.S. v. Roberts*, 548 F.2d 665, 670-671 (C.A.Mich. 1977) states:

We conclude that the agreement is only concerned that a sentenced prisoner who has entered into the life of the institution to which he has been committed for a term of imprisonment not have programs of treatment and rehabilitation obstructed by numerous absences in connection with successive proceedings related to pending charges

in another jurisdiction. There is no indication in the language of the Agreement or in the legislative history that its provisions were intended to apply to persons being detained for trial who are not serving prison sentences.

*U.S. v. Roberts*, 548 F.2d at 670-671.

So, the defendant served one day in jail as a result of his arrest in 2002. He was given credit for serving a day in jail before his sentencing. Even if knowledge that the defendant was charged and convicted in 2002 in California could be imputed to the State, defendant was not serving a sentence. The IAD does not apply where a prisoner is awaiting a sentence. See e.g., *State v. Fay*, 763 So.2d 473 (Fla.App. 4 Dist.,2000), *U.S. v. Taylor*, 173 F.3d 538 (C.A.6 (Tenn.),1999); *People v. Zetsche*, 188 Cal. App. 3rd 917, 233 Cal. Rptr. 720 (1987). Any detainer that the State would have filed would have had no effect. The defendant served no jail time after he was sentence.

**3) June 2006, Orange County, CA**

The State had no information about this charge. The defendant made no contrary allegations at the hearings on this matter. The trial court specifically stated that the problems were with the 1996 and 2002 incidents. (03/09/10, RP 19).

Therefore, by the terms of the IAD ("a person has entered upon a term of imprisonment" and by under the purposes of that act remove obstructions for rehabilitation programs), it was not applicable to the defendant.

**B. With the 2003 change in the time for trial rule, the State need not demonstrate due diligence in procuring the defendant's presence at trial.**

The trial court relied heavily on *State v. Welker*, 157 Wn.2d 557, and *State v. Anderson*, 121 Wn.2d 852, 855 P.2d 671 (1993) in its decision. (See 03/02/10, RP 2, 3, 5, 03/09/10, RP 16, 21, 22). Specifically, the trial court concluded that

those cases required the State to file a detainer upon learning of the defendant's incarceration.

However, both *Welker* and *Anderson* were decided before a significant change in the time for trial rule, CrR 3.3, which went into effect on September 1, 2003. *Welker* dealt with a time period ending on August 13, 2003. In *Anderson*, the key dates were from 1987 to 1990.

Both cases correctly stated that the IAD should be interpreted consistently with the time for trial rule. Under the time for trial rule then existing, the State did have a duty to act with due diligence and in good faith in securing the presence of defendants for trial.

The newest version of CrR 3.3 went into effect on September 1, 2003, and was a major change from the prior versions of the rule. Previously, there was a requirement that prosecutors act in good faith and with due diligence in bringing a defendant to trial. As stated in *Anderson*:

[F]undamental fairness requires that Washington prosecuting authorities act in good faith and with due diligence in bringing a defendant to trial in this state once it has been brought to their attention that the defendant 'is detained in jail or prison outside the state of Washington or in a federal jail or prison' and the defendant 'is subjected to conditions of release not imposed by a court of the State of Washington'.

*Anderson*, 121 Wn. 2d at 864.

The September 1, 2003 amendment to CrR 3.3 did away with this requirement. In adopting the 2003 time-for-trial rule, the Washington State Supreme Court accepted the recommendations of the Washington State Time-for-Trial Task Force. That Task Force recommended a rule that abolished the "due diligence" requirement of cases such as *State v. Welker*, 157 Wn.2d 557; *State v. Anderson*, 121 Wn.2d 852; *State v. Striker*, 87 Wn.2d 870, 557 P.2d 847 (1976); *State v. Greenwood*, 120 Wn.2d 585, 845 P.2d 971 (1993). As the Task Force report states:

Task force members are concerned that appellate court interpretation of the time-for-trial rules has at times

expanded the rules by reading in new provisions. The task force believes that the rule, with the proposed revisions, covers the necessary range of time-for-trial issues, so that additional provisions do not need to be read in. Criminal cases should be dismissed under the time-for-trial rules only if one of the rules' express provision have been violated; other time-for-trial issues should be analyzed under the speedy trial provision of the state and federal constitutions.

Time-For-Trial Task Force, Final Report II.  
B. (Discussion of Consensus Recommendations)

Two separate provisions were enacted to implement this recommendation. The first is a rule of construction set out in CrR 3.3(a)(4):

The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under the language of this rule, but was delayed by circumstances not addressed in this rule or CrR 4.1, the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

CrR3.3(a)(4).

The second provision is CrR 3.3(h), which addresses dismissal:

A charge not brought to trial within the time limit determined under the rule shall be dismissed with prejudice. ... No case shall be dismissed for time-

for-trial reasons except as expressly required by this rule, a statute or the state or federal constitution.  
CrR 3.3(h).

The Supreme Court also accepted the Task Force's recommendation to CrR 4.1 on time for arraignments. The following sentence was added to the rule: "Any delay in bringing the defendant before the court shall not affect the allowable time for arraignment, regardless of the reason for the delay."

As a trade-off for the elimination of the "due diligence" requirement, the Court adopted CrR 2.1(a)(3) which requires the prosecution to search various databases for the defendant's address before issuance of a warrant.

The fact that the amended time-for-trial rule supersedes the "due diligence" requirement of *Striker* and *Greenwood* is well established. See also *State v. Olmos*, 129 Wn. App. 750, 120 P.3d 139 (2005) (amendment to rules superseded the constructive arraignment principles in *Striker* and *State v. Greenwood*, 120 Wn.2d 585, 845 P.2d

971 (1993)); *State v. Castillo*, 129 Wn. App. 828, 120 P.3d 137 (2005) (CrR 4.1(a)(2) precluded court from considering reason for delay in bringing defendant before the court when determining whether defendant was timely arraigned); and *State v. George*, 160 Wn.2d 727, 738, 158 P.3d 1169 (2007). The Court in *George* cited *Anderson*, supra, on which the trial court relied as an example of a case which imposed a requirement of due diligence that is no longer required under the current time-for-trial rule. *George*, 160 Wn.2d at 736-737.

Even if the IAD rather than the Extradition Act was applicable, and even if the defendant was serving a sentence and ignoring the fact that the State had no opportunity to place a detainer on the defendant, the trial court failed to recognize that the 2003 time-for-trial rule ended the requirements for good faith and due diligence and incorrectly concluded that the State was required to place a detainer on the defendant.

**C. The State did exercise good faith and due diligence.**

Nevertheless, the State did act in good faith and with due diligence. It may be helpful to ask a variation of an old question: "What did the State of Washington know, and when did it know it?"

1996: The State knew that the police in Riverside, California had contacted the defendant regarding a "suspicious person" report. The State did not know if the defendant was arrested or incarcerated.

2002: The State knew that the defendant had been arrested in Truckee, Nevada County, California on March 27, 2002. However, the State was unaware that charges were filed against the defendant, that the defendant plead guilty, or that he was eventually sentenced to one day in jail with credit for time previously served. Even if the State was aware of all such facts, there was no opportunity to place a detainer on

the defendant because he did not go into jail following his sentencing.

*2006:* There is no dispute that the State had no knowledge of the criminal problems the defendant had in California. The trial court specifically found that the dismissal was based on events in 1996 and 2002.

*Welker* and *Anderson* were concerned with the situation where a prosecutor knows the defendant is incarcerated in a foreign state, but deliberately refuses to file a detainer so the IAD does not run. See *Welker*, 157 Wn.2d at 566, FN4. The Court needn't have this concern here. The defendant did nothing to attempt to resolve the case herein. At no point did he contact the prosecutor, the police, or the court in a desire to resolve the charge.

**D. The trial court further erred in holding that the defendant had no duty under the IAD to request final disposition.**

After holding that the State should have filed a detainer against the defendant, the trial

court further erred by assuming that the defendant would have eagerly sought his return to Washington and fully complied with his requirements under the IAD. Therefore, the court seemed to reason, the defendant should not be held to his requirements to notify the State of his location and his desire to face the charge.

However, the mere fact that a detainer was lodged does not require either the inmate or the prosecution to seek disposition under the IAD. *State v. Stewart*, 266 Mont. 525, 881 P.2d 629 (Mont. 1994); and *State v. Batungbacal*, 81 Hawaii 123, 913 P.2d 49 (HI 1996). The defendant clearly wanted to stay out of Washington State and hope never to face the charges herein. If a detainer had been placed against him, there is no reason to believe he would have sought a final disposition. Nevertheless, as stated in *Welker*, “[O]nce a detainer is filed, it is incumbent upon a defendant to start the clock ticking on the 180-day IAD time limit by ensuring his IAD

request is received by the appropriate county prosecutor in the receiving state." *Welker*, 157 Wn.2d at 566 FN5.

Not only is the defendant required to request final disposition, he must strictly comply with the IAD requirements to trigger the IAD's 180-day clock. *Roberson*, 78 Wn. App. at 605. He must request final disposition, accompany that request with a certificate from the official having custody, and mail it by certified or registered mail to the court and the prosecutor. RCW 9.100.010, Art. III(b).

The trial court's conclusion that there was a violation of the IAD was based in part on the faulty assumptions that the defendant would have sought his return to Washington after a detainer was filed, and further, that the defendant would have complied with the notice requirements of the IAD. The trial court had no basis to make either assumption.

**4. In any event, even ignoring the above arguments, the trial court erred in concluding that dismissal was appropriate.**

A violation of the IAD's 180-day time limit does not require automatic dismissal of the charges. *State v. Olmos*, 129 Wn. App. at 758; *Welker*, Wn.2d at 566-567.

In *State v. Iniquez*, 167 Wn.2d 273, 217 P.3d 768 (2009), the Court summarized the speedy trial analysis. The initial question is whether any delay is presumptively prejudicial. This must be made according to the facts of the case, rather than a black and white rule that, say, eight to twelve months will be presumptively prejudicial. If the delay is found to be presumptively prejudicial, the speedy trial analysis under the State constitution is substantially the same as under the Federal constitution. That analysis balances 1) the length of the delay, 2) the reasons for the delay, 3) the defendant's assertion of his rights, and 4) prejudice to the

defendant. So, the first issue is whether the delay is presumptively prejudicial.

**The trial court incorrectly assumed that the delay was presumptively prejudicial based on the length of the delay alone.**

As stated in *Iniguez*:

[W]e reject a formulaic presumption of prejudice upon the passing of a certain period of time. Of course, the passage of time is an important factor in this analysis. The length of delay is not, however, the only factor. The complexity of the charges and a reliance on eyewitness testimony are two other factors that also can be examined in this analysis.

*Iniguez*, 167 Wn.2d at 292.

Here, there are no eyewitnesses; there hardly ever are in cases alleging child sexual abuse. A delay of ten years was held not to be unconstitutional in *State v. Alter*, 67 Wn.2d 111, 406 P.2d 765 (1965). Nevertheless, the more important issue is whether, on balance, the defendant's speedy trial rights were violated. Accordingly, the State will address the four factors above:

*Length of delay:* The length of the delay from the filing of the Information to the hearing is long. However, the more important consideration is why this delay happened.

*The reasons for the delay:* The reason for the delay rests with the defendant. He never attempted to contact the prosecutor, turn himself in, or in any way address the charge.

*Assertion of defendant's rights:* At no point has the defendant asserted his right to a speedy trial. In fact, the defendant has done his best to avoid trial. He resided in California. He did not return to Washington after the charges were filed. Even after his extradition to Washington, he waived his time-of-trial rights twice.

*Prejudice to the defendant:*

Prejudice is judged by looking at the effect on the interests protected by the right to a speedy trial: (1) to prevent harsh pretrial incarceration, (2) to minimize the defendant's anxiety and worry, and (3) to limit impairment to the defense. Even though impairment to the defense by the passage of time is the most serious form of prejudice, no showing of actual

impairment is required to demonstrate a constitutional speedy trial violation. As noted above, this is difficult to prove, and as a result, we presume such prejudice to the defendant intensifies over time. (citations omitted).

*Iniguez*, 167 Wn.2d at 295.

Regarding pretrial incarceration, the defendant was not incarcerated on this offense until August 21, 2009. He first appeared in the Benton County Superior Court on September 18, 2009. (CP 101). He waived his right to a speedy trial on November 4, 2009, and on January 27, 2010. (CP 114, 115). The case was dismissed on March 9, 2010. (CP 98). So, except for the period from August 21, 2009, to November 4, 2009, the case was continued at the defendant's request.

Regarding the anxiety and worry, if the defendant was stressed about the case, he could have returned to Washington, checked into jail, and insisted on a trial within 60 days. There is no evidence that the defendant was worried about the case. However, if he was, he should not have fled the State and avoided returning.

Regarding prejudice, the total representation is the following:

Ms. Meehan-Corsi: Since we are noting things for the record of what Your Honor is finding I would like to put on the record we do have a witness Crystal Gayle Wade that we feel would be important to the case and we are unable to locate her due to the fact all of this time is going by.

The Court: Can you give me an offer of proof as to why she would be a good witness.

Ms. Meehan-Corsi: I guess she had talked with the victim and the victim's family about what may or may not have happened so we would call her.

(03/09/10, RP 30).

The State asks, rhetorically, "Is that the best the defendant can do?" Someone had talked to the victim and the victim's family about "what may or may not have happened." If that is the best the defendant can do, he has no relevant evidence.

Balancing these factors, the delay occurred because the defendant did not want to face the charge and avoided Washington State. His speedy trial rights were not violated.

## **CONCLUSION**

The trial court made a series of errors leading to the dismissal of the Information. The trial court was wrong in believing that the IAD, rather than the Extradition Act, applied. It was wrong in holding that the State was required to file a detainer. It was wrong in holding that the State failed to act in good faith and with due diligence. It was wrong in holding that good faith and due diligence are still requirements. It was wrong in holding that the defendant had no responsibilities under the IAD. It was wrong in holding that the delay alone was sufficient reason to dismiss the case. It was wrong in failing to recognize that the defendant avoided the case for years.

The dismissal should be reversed.

**RESPECTFULLY SUBMITTED** this 9th day  
September 2010.

**ANDY MILLER**

Prosecutor

A handwritten signature in black ink, appearing to read "Terry J. Bloor". The signature is written in a cursive style and is positioned over the typed name of Terry J. Bloor.

**TERRY J. BLOOR**, Deputy  
Prosecuting Attorney

Bar No. 9044

OFC ID NO. 91004

APPENDIX A  
FLOW CHART OF TRIAL  
COURT DECISIONS

## FLOW CHART OF TRIAL COURT DECISIONS

*Does the IAD or Extradition Act apply?*

Trial Court Decision

IAD

**(Case should be reversed on this point.)**

Correct Decision  
Extradition

*Did State have knowledge the defendant was serving a sentence?*

Trial Court Decision

Yes

**(Case should be reversed on this point.)**

Correct Decision  
No

*Was State required to act in good faith, with due diligence?*

Trial Court Decision

Yes

**(Case should be reversed on this point.)**

Correct Decision  
No

*Did the State fail to act in good faith, with due diligence?*

Trial Court Decision

Yes

**(Case should be reversed on this point.)**

Correct Decision  
No

*Does the defendant have any responsibilities under the IAD?*

Trial Court Decision

No

**(Case should be reversed on this point.)**

Correct Decision  
Yes

*Is the delay alone sufficient reason for dismissal?*

Trial Court Decision

Yes

**(Case should be reversed on this point.)**

Correct Decision  
No

*Was the defendant denied a Speedy Trial?*

Trial Court Decision

Yes

**(Case should be reversed on this point.)**

Correct Decision  
No