

29439-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

STEPHEN W. HOLMES, RESPONDENT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF APPELLANT

STEVEN J. TUCKER
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I.

ASSIGNMENT OF ERROR

1. The trial court incorrectly dismissed the State's charges against defendant, Stephen Holmes, for failure to comply with Mr. Holmes' right to trial within 180 days under the Interstate Agreement on Detainers (IAD).

II.

ISSUES PRESENTED

- A. Was the State correct in asserting that a detainer must be lodged against a defendant before that defendant can activate his rights under the IAD?
- B. Was the State correct in asserting that the defendant must cause his request for final disposition to be delivered to prosecuting officials in the "receiving" state and that the right to trial within 180 days under the IAD begins when prosecuting officials from the "receiving" jurisdiction actually receive the request?

III.

STATEMENT OF THE CASE

On July 29, 2003, defendant was charged by information filed in the above cause number with three offenses from two separate incidents. CP 1-2. On the same date, a summons was sent to each of four different addresses associated with defendant, ordering him to appear for arraignment on August 11, 2003, at 10:30 a.m. CP 70. When defendant failed to appear for arraignment a warrant was issued for his arrest. CP 59-61.

On September 18, 2003, the Humboldt Count Sheriff's Office sent a teletype notice to the Spokane Police Department Records Division indicating "THE ABOVE SUBJECT IS RESIDING IN OUR AREA" (all capitals in original), and indicated an address at which he reportedly resided as of June 19, 2003. RP 3; CP 44, 63. The teletype further indicated that defendant had reported the same address on that date. CP 44, 63. It was determined that Nevada was not a "free" state for extradition, so the Prosecutor's Office did not seek to have defendant located and arrested. RP 3; CP 52.

In March 2004, after being at-large for six months, defendant was arrested and held in the Winnemucca County Jail, NV, for the charge of failing to register as a sex offender. CP 52. In January 2005, defendant

was sentenced to twelve to thirty months for failure to register as a sex offender and was sent to Northern Nevada Correctional Center, then transferred in March of that same year to Lovelock Correctional Center in Pershing County, Nevada to complete his sentence. CP 52.

Defendant's Classification Casework Specialist advised defendant to fill out and sign the request form for final disposition under the Interstate Act on Detainers ("IAD"). RP 3-4; CP 7-10. Defendant completed the form on April 25, 2005, and forwarded it to his Casework Specialist on April 26, 2010, with a stamped envelope addressed to the Superior Court at the Spokane County Courthouse. RP 4-5; CP 7-10. Defendant took no further action regarding his final disposition under the IAD.

Defendant had no contact with the Prosecutor's Office until June 7, 2010, when a notice was received from the Spokane Police Department Records Division indicating defendant was currently in custody in Madison County, ID. CP 45. Two days later, the Prosecutor's Office received notice via e-mail from Fugitive Transport Coordinator Brenda Nelson indicating that defendant was ready for transport and that he should arrive in Spokane on June 18, 2010. CP 46.

Defendant arrived in Spokane and was booked on the outstanding warrant on June 18, 2010. CP 61. He made a first appearance on June 21,

2010, and was ordered held on \$25,000.00 bond. CP 71. He was arraigned on June 29, 2010, and had his trial set for August 23, 2010. CP 73. At the Omnibus Hearing on August 3, 2010, the trial date was continued to October 18, 2010, to accommodate defense counsel's August vacation schedule. CP 73. On August 4, 2010, defendants' attorney filed a motion to dismiss for State's failure to comply with defendant's right to trial within 180-days under the IAD. CP 74-75. The trial court issued its order dismissing the State's charges on September 16, 2010. RP 16-20; CP 47. The trial court entered findings of fact and conclusions of law on October 21, 2010. CP 51-69.

IV.

ARGUMENT

Standards of Review

The overarching issue on appeal is whether the trial court properly interpreted RCW 9.100.010 and applied its various requirements on the State and defendant provided therein. The standard of review is *de novo* because “[i]nterpretation of statutes is a matter of law subject to independent appellate review.” *State v. Karp*, 69 Wn. App. 369, 848 P.2d 1304 (1993). Alternatively, under the abuse of discretion standard, decisions within the discretion of the trial court are reversible by

an appellate court only for manifest abuses of discretion. Stated differently, the question becomes whether any rational trier of fact could come to the same conclusion. *See State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980). Regardless of which standard the Court applies, the outcome will be the same. The trial court incorrectly interpreted RCW 9.100.010 and therefore misapplied the rule to the facts the case. RP 5-7; 16-20.

The Interstate Agreement on Detainers

The Interstate Agreement on Detainers (“IAD”) is an interstate compact designed to address issues that may arise when an individual is incarcerated in one jurisdiction while also facing charges in another jurisdiction. *See* RCW 9.100.010.

To place a “hold” on a defendant incarcerated in a foreign jurisdiction, the home jurisdiction *may* lodge a detainer against the defendant, saving the home jurisdiction’s place in line to prosecute the defendant. *See* RCW 9.100.010. The IAD then provides for the transport of incarcerated defendants from a “sending” jurisdiction to a “receiving” jurisdiction so that a defendant may face pending charges in the receiving jurisdiction, which is the jurisdiction that filed the detainer against the defendant. *Id*, *State v. Welker*, 157 Wn.2d 557, 563, 141 P.3d 8 (2006).

The object of this process is to allow the defendant to seek final disposition of pending charges. *See* RCW 9.100.010(c).

The IAD further states that once final disposition of pending charges are sought, the defendant “shall be brought to trial within *one hundred eighty days*.” RCW 9.100.010(a). In order for the defendant to exercise the right to trial within the 180-day time period, however, *the defendant must trigger that right under the IAD*.

There are several steps in the process that “trigger” a defendant’s rights under the IAD. *State v. Welker*, 157 Wn.2d at 563. First, the receiving state lodges a detainer against the defendant in the foreign sending state. *Id.*, at 563-64. While a detainer is ordinarily required, the State is under a duty of good faith. *Id.* (citing *State v. Anderson*, 121 Wn.2d 852, 864-65, 855 P.2d 671 (1993)). If the State becomes aware of a defendant’s incarceration in another state, the prosecuting officials from that jurisdiction have a duty to file a detainer against that individual. *Id.* However, the prosecuting officials have no duty to seek out at-large defendants. *Id.*

When a detainer is filed, the penal officials in the sending state must inform the defendant of the detainer and advise of the right to request final disposition of those charges in the receiving state under the IAD. Finally, upon notice of the detainer, the defendant must invoke his IAD

rights by *causing* the appropriate request to be delivered to the court and the prosecutor of the county where the receiving state's charges are pending.

A. A DEFENDANT CANNOT ACTIVATE RIGHTS UNDER THE ACT UNTIL THE STATE IN WHICH CRIMINAL CHARGES ARE PENDING HAS LODGED A DETAINER.

Before a defendant can use the IAD to seek final disposition, the prosecuting attorney from the foreign jurisdiction must first utilize the IAD to file a detainer against the defendant. *State v. Anderson*, 121 Wn.2d at 861. Washington prosecuting authorities are required to act in good faith and with due diligence to bring a defendant to trial under the Act. *State v. Welker*, 157 Wn.2d at 563 (*citing Anderson*, 121 Wn.2d at 864-65). However, prosecuting attorneys have no affirmative duty to seek out at-large defendants to bring them to trial. *Id.*

Herein, the Prosecutor's Office from the foreign jurisdiction (Washington) never lodged a detainer against defendant incarcerated in Nevada. The facts show that no notice was ever sent by defendant to the Prosecutor's Office. Therefore, as the trial judge pointed out, there is no evidence suggesting that the Spokane County Prosecutor's Office ever received defendant's request [or knew of his whereabouts]. RP 5-6. The IAD requires that a detainer be lodged against the defendant prior to the

defendant using the IAD for request of final disposition. *Anderson*, 121 Wn.2d at 864-65. Here, the Spokane County Prosecutor's Office did not lodge a detainer against the defendant. Although the Washington prosecuting authorities have a duty to use good faith and diligence, there was no breach of those duties because the Spokane County Prosecutor's Office had no knowledge of defendant's whereabouts. *See Welker*, 157 Wn.2d at 563. *See also State v. Stewart*, 130 Wn.2d 351, 365, 922 P.2d 1356 (1996) (Where it was held that prosecutors are not required to seek out an at-large defendant in order to file a detainer against him). The only notification that Spokane County Prosecutor's Office had that defendant was in Nevada was a teletype from Humboldt Count Sheriff's Office indicating "THE ABOVE SUBJECT IS RESIDING IN OUR AREA." CP 44, 63.

In conclusion, RCW 9.100.010 and supporting case law requires a detainer be lodged against the defendant. In the alterative, the defendant must show bad faith on behalf of prosecuting officials in bringing the defendant to trial. A detainer was never lodged against defendant to trigger his use of any rights under the IAD. Furthermore, the requirement that prosecutors act in good faith and due diligence was never breached because the Spokane County Prosecutor's Officer never received defendant's request, knew of defendant, nor did they have an affirmative

duty to seek out defendant as he was at-large in another state. If the statute had been interpreted correctly, the law applied to the uncontested facts would have yielded a different outcome. Further, no rational trier of fact could have come to a different conclusion.

B. THE RIGHT TO TRIAL WITHIN THE SPECIFIED PERIOD UNDER THE IAD BEGINS WHEN THE DEFENDANT HAS CAUSED HIS REQUEST FOR FINAL DISPOSITION TO BE SERVED ON THE PROSECUTING OFFICIAL(S) IN THE “RECEIVING” JURISDICTION.

The defendant has *caused* his request for final disposition to be delivered once the prosecuting authority from the “receiving” jurisdiction has received the request. *Fex v. Michigan*, 507 U.S. 43, 113 S. Ct. 1085, 122 L. Ed. 2d 406 (1993). The one-hundred-eighty day time limit for trial does not commence until the prosecuting authority has received the request. *Id.* Stated differently, the one-hundred-eighty day time for trial period does not begin when the defendant has merely handed their request to the warden, commissioner of correction or other official having custody of him as defendant would suggest. *Id.* See RCW 9.100.010 Art. III (b).

Furthermore, merely submitting a request is not enough. Defendant’s request must be accompanied by a certificate from the official having custody of the prisoner. RCW 9.100.010, Art. III(a). It must be sent by certified or registered mail, and must be sent to both the prosecutor

and the court. The IAD requires the defendant strictly comply with its requirements. *State v. Roberson*, 78 Wn. App. 600, 600-06, 897 P.2d 443 (1995).

In *Fex*, the prisoner was brought to trial one-hundred-ninety-six days after submitting his request to the Indiana prison authorities and one-hundred-seventy-seven days after the Michigan prosecutor received the request. 507 U.S. at 43. The sole question before the Supreme Court was whether the phrase “within one hundred and eighty days after he shall have caused to be delivered” means a delivery to the Indiana prison authorities or delivery to the “receiving” court and prosecutor in Michigan. The Supreme Court held that the one-hundred-eighty day time period commenced when the court and prosecuting authority from the jurisdiction that lodged the detainer receives the request for final disposition. *Id* at 52. The court reasoned that there is documentary evidence within the IAD that suggests the one-hundred-eighty day period commences when the receiving jurisdiction receives the request for final disposition. *Id* at 51. The Court pointed to the fact that the IAD requires the Warden send the request via certified or registered mail. *See* RCW 9.100.010, Art. III (b). Clearly, the IAD requires verification of the date when the court and prosecuting authority receives the prisoner’s request from the Warden but *does not* require such date verification when

the prisoner submits the request to the Warden or other custodian. *Id.*; *Fex*, 507 U.S. at 43. This documentary evidence points to when the one-hundred-eighty day time period begins. *Id.*

The court in *Roberson* further stressed the importance of sending the request via certified or registered mail, with a certificate of the official having custody over the prisoner, and having the request sent to both the court and prosecuting attorney. *State v. Roberson*, 78 Wn. App. at 605. Even if there was a detainer lodged against the prisoner in that case, which is required, the court was adamant that the request failed because the above mentioned criteria had not been met. *Id.*

Here, defendant sent his request to the Clerk of the Court but not to the prosecuting authority. RP 5-6. Further, defendant did not send the request certified or registered mail. RP 6. However, the one-hundred-eighty day period does not begin to run until the prosecuting authority receives the request. *Fex*, 507 U.S. at 52. In addition, the Court in *Roberson* was adamant in requiring the request be sent certified or registered mail. 78 Wn. App. at 605. Defendant did not comply with the conditions precedent required to trigger the application of the IAD and, thus, never activated his rights under the IAD.

In conclusion, even if a detainer was or should have been lodged, defendant failed to activate the one-hundred-eighty day period under the

IAD. The IAD requirements are not mere suggestions that can be waived by a defendant when they are inconvenient. The IAD requires that the prisoner cause the request to be delivered to the court and prosecuting authority in the jurisdiction that has lodged the detainer. The IAD further provides that the request must be accompanied with a certificate of the official having custody over him and that the request or certificate be sent by certified and registered mail. Defendant did not comply with these requirements and therefore did not trigger his rights under the IAD.

Treating a defendant's responsibilities under the IAD as mere inconveniences or putting those responsibilities within the purview of officials in foreign jurisdictions could work a number of peculiar outcomes. If allowed, prosecuting attorney's within the State of Washington would be necessarily fettered to the malfeasance of *some* officials from foreign jurisdictions. If the trial court's interpretation were true, then case workers from any signatory state could potentially inhibit the prosecution of crimes, by the State of Washington, from the mundane to the heinous simply because of a single clerical error. Whether construed under a *de novo* or abuse of discretion standard, the conclusion is the same. The statute, properly interpreted, requires the above-mentioned criteria be met and defendant did not satisfy those criteria.

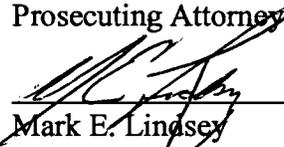
V.

CONCLUSION

For the reasons stated, the trial court's dismissal of charges should be reversed.

Dated this 16th day of February, 2011.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,)
)
 Appellant,) NO. 29439-1-III
 v.)
) CERTIFICATE OF MAILING
STEPHEN W. HOLMES,)
)
 Respondent,)

I certify under penalty of perjury under the laws of the State of Washington, that on February 16, 2011, I mailed a copy of the Appellant's Brief in this matter, addressed to:

Susan M. Gasch
Attorney at Law
PO Box 30339
Spokane WA 99223

and to:

Stephen W. Holmes
1224 East Trent
Spokane WA 99202

2/16/2011
(Date)

Spokane, WA
(Place)


(Signature)