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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner

v.

RYAN JAMES PEELER, Respondent

BRIEF OF AMICUS CURIAE
WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

PAMELA B. LOGINSKY
Staff Attorney
Washington Association of Prosecuting
Attorneys
206 10th Ave. SE
Olympia, WA 98501
(360) 753-2175
Fax: (360) 753-3943
E-mail: pamloginsky@waprosecutors.org



ORIGINAL

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I. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys (“WAPA”) represents the elected prosecuting attorneys of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes. WAPA has filed this brief at the request of the Court.

II. ISSUES PRESENTED

1. Whether a prisoner, who is transferred to a different facility prior to the receipt by the prosecutor and the court of his request for final disposition of pending charges, must notify the prosecutor and the court of his current location in order to avail himself of the protections of the intrastate detainer act?

2. Whether the 120 day period for trying an offender under the intrastate detainer act is tolled when the prisoner is unavailable?

III. STATEMENT OF FACTS

WAPA agrees with the facts as stated in the State’s Supplemental Brief of Petitioner.

IV. ARGUMENT

A. HISTORY OF THE INTRASTATE DETAINER ACT

The Uniform Mandatory Disposition of Detainers Act (UMDDA) was promulgated in 1958 by the National Conference of Commissioners on the

Uniform State Laws. The UMDAA is a procedural statute establishing rules for the prompt disposition of detainees (i.e. warrants filed against persons already in custody) by providing that prosecuting officials, upon the request of the prisoner, must move forward with trial of the charge which caused the detainee. Failure to do so within a reasonable time brings about a dismissal of the charge and withdrawal of the detainee. The UMDDA was adopted by only a handful of states,¹ including Colorado.²

One year after the UMDDA was promulgated, the Washington State Legislature enacted Chapter 9.98 RCW. *See* Laws of 1959, ch. 56. Chapter 9.98 RCW, which is commonly referred to as the “intrastate detainee statute,” is substantially similar to the UMDDA. Presumably, the adoption of the intrastate detainee statute was prompted by the UMDDA.³

Many other states followed Washington’s lead and adopted statutes that were similar to, but not identical to the UMDDA. *See, e.g.,* 730 ILCS 5/3-8-10; Md. Correctional Services Code Ann. § 8-501; Ohio R.C. 2941.401; Wis. Stat. § 971.11 .

¹*See* Uniform Law Commission Enactment Status Map for the UMDDA, available at <http://www.uniformlaws.org/Act.aspx?title=Mandatory%20Disposition%20of%20Detainees> (last visited Dec. 22, 2014).

²Colorado’s version of the UMDDA may be found in appendix A.

³“The legislative history of RCW 9.98.010 is nonexistent.” *State v. Morris*, 74 Wn. App. 293, 297, 873 P.2d 561 (1994), *aff’d on other grounds*, 126 Wn.2d 306, 892 P.2d 734 (1995).

B. PURPOSE OF THE INTRASTATE DETAINER ACT

The jurisdictions that have enacted the UMDDA all agree that its purposes are identical to those of the Interstate Agreement on Detainers ("IAD").⁴ See, e.g., *Johnson v. People*, 939 P.2d 817, 820 (Colo. 1997); *State v. Clark*, 222 Kan. 65, 563 P.2d 1028, 1032 (1977). States that have adopted statutes similar to the UMDDA also agree that the purposes of their intrastate detainer statutes are similar to those of the IAD. See, e.g., *State v. Oxendine*, 58 Md. App. 591, 473 A.2d 1311, 1314 (1984); *Morris*, 74 Wn. App. at 297.

The purpose of both the IAD and the various intrastate detainer statutes is to encourage the expeditious and orderly disposition of outstanding criminal charges and determination of any and all detainers based on untried indictments, informations, or complaints. See generally RCW 9.100.010, Article I. The rationale underlying this purpose is that detainers based upon charges outstanding against a prisoner produce uncertainties, anxiety and apprehension which obstruct programs of prisoner treatment and rehabilitation. See generally *Carchman v. Nash*, 473 U.S. 716, 719-20, 105 S. Ct. 3401, 87 L. Ed. 2d 516 (1985) (IAD); *United States v. Hall*, 974 F.2d 1201, 1204-05 (9th Cir. 1992) (IAD); *People v. Roberts*, 2013 COA 50, 321 P.3d 581, 585 (2013) (UMDDA).

⁴The Council of State Governments drafted the language of the IAD in 1956. See *United States v. Mauro*, 436 U.S. 340, 349-350, 98 S. Ct. 1834, 56 L. Ed. 2d 329(1978).

Some courts also recognize that lengthy delays in the trial of the detainer charge may impair the ability of the accused to defend himself. Distance from the place where the offense occurred may impair the accused's ability to keep apprised of the whereabouts of witnesses and isolates him from the ready availability of the assistance of his counsel. *State v. Barnes*, 273 Md. 195, 328 A.2d 737, 743 (1974). On a similar vein, courts recognize that "shuttling" defendants between jurisdictions prior to the resolution of the detainer charge is contrary to the "orderly disposition" of charges. *See generally Alabama v. Bozeman*, 533 U.S. 146, 155-56, 121 S. Ct. 2079, 150 L. Ed. 2d 188 (2001) (explaining some of the purposes served by the "anti-shuttling" provisions of the IAD and dismissing charges based upon a one day long interruption of the initial imprisonment).

C. INTERPRETATION OF THE INTRASTATE DETAINER ACT

Because the IAD and the UMDDA embody like policies, decisions rendered under one are generally applicable to the other. *See, e.g., People v. Morgan*, 712 P.2d 1004, 1007-08 (Colo. 1986); *State v. Julian*, 244 Kan. 101, 765 P.2d 1104, 1107 (1988); *State v. Vonbehren*, 77 N.W.2d 48, 51-52 (Minn. App. 2010); *Murphy v. State*, 777 S.W.2d 636, 638 (Mo. App. 1989). This Court subscribes to this view, stating that interpreting the intrastate detainer act consistently with the IAD reduces confusion. *State v. Morris*, 126 Wn.2d 306, 313-14, 892 P.2d 734 (1995).

Two well-developed principles from out-of-state IAD and intrastate detainer cases statutes are relevant to the issues presented in the instant case.

1. A Prisoner Who is Moved from the Facility Must Make a New Request for Final Disposition

Ohio has adopted a variant of the UMDDA that is similar to Washington's intrastate detainer statute. *See* Ohio R.C. 2941.401.⁵ Ohio, like Washington, interprets its time for trial rule as not requiring the State to exercise reasonable diligence to locate an incarcerated defendant and bring him before the court for trial. *Compare State v. Hairston*, 101 Ohio St. 3d 308, 2004 Ohio 969, 804 N.E.2d 471 (2004) (the State's time for trial statute does not place a duty upon the State to exercise reasonable diligence to discover the location of an imprisoned defendant against whom charges are pending), *with State v. Chavez-Romero*, 170 Wn. App. 568, 577-78, 285 P.3d 195 (2012), *review denied*, 176 Wn.2d 1023 (2013) (under the amended version of CrR 3.3 the State no longer has the obligation to exercise due diligence in attempting to procure a defendant's presence for an arraignment on charges); *State v. Rookhuyzen*, 148 Wn. App. 394, 200 P.3d 258 (2009) (same). In *State v. Roulette*, 163 Ohio App. 3d 775, 840 N.E.2d 645 (2005), these two principles intersected and resulted in the court holding that a defendant, who wishes a trial within the strict time limits of the statutes, bears the burden of sending a request to the State for a timely disposition

⁵Ohio R.C. 2941.401 is reproduced in appendix B.

from his new place of incarceration.

In *Roulette*, the defendant was in custody in the Franklin County Jail in Ohio when he was served with a copy of an indictment issued by Ross County, Ohio. Before Ross County could take possession of the defendant, he was transferred to prison. The defendant argued that since Ross County knew he had been confined in the Franklin County Jail, their failure to take the necessary steps to determine his location once transferred to prison mandated the dismissal of charges. *Roulette*, 840 N.E.2d 645 at 646. The Ohio Supreme Court rejected the defendant's claim, finding that the Ohio's intrastate detainer statute placed the burden of informing the State of the defendant's precise location upon an incarcerated defendant who is aware of pending charges. *Id.*, at 648.

In the instant case, Ryan Peeler, upon becoming aware of the Skagit County assault charge, caused a "Notice of Place of Imprisonment and Request for Untried Indictment" to be sent to Skagit County. The notice, which was received by the Skagit County Superior Court on October 26, 2011, stated that Peeler was currently at the Washington State Corrections Center in Shelton. The State, exercising extraordinary diligence, obtained an order for transport on October 27, 2011. When the order of transport was received at the Washington State Corrections Center, Peeler was not there.

Pursuant to the current version of CrR 3.3, Chapter 9.98 RCW, and *Roulette*, the State had no duty to take any further action to bring Peeler before the court for arraignment until Peeler provided the State with his current location. Peeler did not provide Skagit County with any notice of his incarceration in the King County Jail. Once Peeler filed a new notice of his current place of incarceration, Skagit County promptly obtained a transport order and trial was held within the time limits contained in RCW 9.98.010(1). The Court of Appeal's decision vacating the conviction must, therefore, be reversed.

2. The Time Periods Are Tolloed During Any Time a Defendant is "Unable to Stand Trial"

The time limits in the IAD and in the various state intrastate detainer acts are generally tolled during any time that a defendant is "unable to stand trial." *See* RCW 9.100.010, Article VI (a) ("(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter."). Some of the tolling provisions are expressly included in the intrastate detainer statutes and the IAD. *See, e.g.*, RCW 9.98.010(4) (escape from custody subsequent to request for final disposition voids request); RCW 9.100.010, Article III (f) (same); RCW 9.98.030 (chapter not applicable to mentally ill detainees); RCW 9.100.010,

Article VI (b) (same). These express provisions are supplemented by the particular jurisdictions' time for trial rules or statutes. *See, e.g., United States v. Collins*, 90 F.3d 1420 (9th Cir. 1996) (applying the tolling provisions of the Speedy Trial Act, 18 U.S.C. §3161(h)(1)-(9), to the IAD); *United States v. Cephas*, 937 F.2d 816, 818-19 (2nd Cir 1991) (a circumstance that qualifies as an exclusion under the speedy trial act also suffices to toll the time periods of the detainer act), *cert. denied*, 502 U.S. 1037 (1992); *People v. Roberts*, 2013 COA 50, 321 P.3d 581 (2013) (borrowing principles derived from statutory speedy trial cases to determine when the period prescribed by the UMDDA may be extended); *People v. Waclawski*, 286 Mich. App. 634, 780 N.W.2d 321, 344 (2009) (applying the body of law applicable to the speedy trial rules to the IAD).

Many courts have considered whether ongoing criminal proceedings in another jurisdiction will toll or extend the time limits contained in the IAD, UMDDA, and other intrastate detainer statutes. The majority of federal and state courts agree that the time limits are tolled while the defendant is engaged in ongoing criminal proceedings in another jurisdiction. *See, e.g., United States v. Roy*, 830 F.2d 628, 637 (7th Cir.), *cert. denied*, 484 U.S. 1068 (1987) (the right to a speedy trial under the IAD is automatically tolled by a showing that a prisoner is being tried elsewhere in other charges); *Johnson v. Commissioner of Correction*, 60 Conn. App. 1, 758 A.2d 442

(2000) (defendant was unable to stand trial in Massachusetts during the Connecticut proceedings, therefore the 180 day IAD period was tolled during the ongoing criminal proceedings in Connecticut); *State v. Pair*, 416 Md. 157, 5 A.3d 1090, 1101 (2010) (a defendant is unable to stand trial under the IAD while the sending jurisdiction is actively prosecuting the inmate on current and pending charges); *State v. Binn*, 208 N.J. Super. 443, 506 A.2d 67, 69-70 (Sup. Ct. N.J. App. Div. 1986) (prisoner unable to stand trial in New Jersey because of the legitimate claim of New York to hold him to dispose of the remaining New York charges); *People v. Vrlaku*, 134 A.D.2d 105, 523 N.Y.S.2d 143 (N.Y. App. Div. 1988) (tolling properly applied while prisoner awaited federal drug charges in federal detention facility), *aff'd*, 73 N.Y.2d 800, 533 N.E.2d 1053, 537 N.Y.S.2d 24 (N.Y. 1988).

The rule contained in these cases is consistent with Washington time for trial cases and time for trial rules. *See generally State v. Chom*, 162 Wn.2d 451, 466, 173 P.3d 234 (2007) (CrRLJ 3.3(e)(2) “relieves courts of the burden of simultaneously adjudicating multiple cases within the 60/90 day time-for-trial period”); *State v. Swenson*, 150 Wn.2d 181, 75 P.3d 513 (2003) (time for trial tolled on Jefferson County charge while defendant remained in custody pending the disposition of charges in King County); *State v. Huffmeyer*, 145 Wn.2d 52, 61, 32 P.3d 996 (2001) (the entire period a defendant is detained pending the disposition of unrelated charges is

excluded from the time for trial period); CrR 3.3(e)(2) (“The following periods shall be excluded in computing the time for trial: Arraignment, pre-trial proceedings, trial, and sentencing on an unrelated charge.”); CrRLJ 3.3(e)(2) (same).

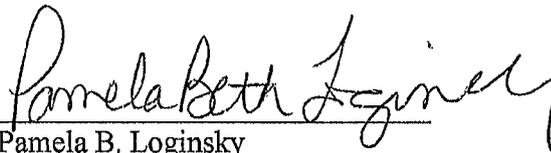
Other courts have held that while a prisoner is in the custody of one jurisdiction facing charges which he requested be speedily resolved under the Agreement, he is unable to stand trial in another jurisdiction in which he has also requested speedy resolution of pending charges. *See United States v. Mason*, 372 F. Supp. 651 (N.D. Ohio 1973); *Vaden v. State*, 712 N.E.2d 522 (Ind. App. 1999); *State v. Minnick*, 413 So.2d 168 (Fla. 2d DCA 1982); *State v. Maggard*, 16 Kan. App. 2d 743, 829 P.2d 591 (1992); *State v. Wood*, 241 N.W.2d 8 (Iowa 1976). These jurisdictions reason that a prisoner should not be able to manipulate the detainer process to his advantage and that his own actions in this regard make him unable to stand trial in both jurisdictions at the same time. *Id.* Although it is unclear whether the instant case involves simultaneous requests for speedy disposition in both King County and Skagit Court, the rationale articulated by these cases are applicable to the unique circumstances of this case. Peeler cannot be allowed to avoid the charges in Skagit County simply by filing a request for final disposition under the intrastate detainer act in the King County matter. Since the defendant cannot stand trial in both jurisdictions at the same time, the running of the RCW

9.98.010(1) 120-day period must be tolled while proceedings occur in the other jurisdictions. The Court of Appeals' decision to the contrary must be reversed.

V. CONCLUSION

The Court of Appeals must be reversed and Peeler's conviction for assault must be reinstated.

Respectfully submitted this 2nd day of January, 2015.



Pamela B. Loginsky
Staff Attorney
WSBA No. 18096

APPENDIX A

Colorado's Uniform Mandatory Disposition of Detainers Act

C.R.S. 16-14-101. Short title

This article shall be known and may be cited as the "Uniform Mandatory Disposition of Detainers Act".

C.R.S. 16-14-102. Request for disposition of untried complaint or information

(1) Any person who is in the custody of the department of corrections pursuant to section 16-11-301 or parts 8 and 9 of article 1.3 of title 18, C.R.S., may request final disposition of any untried indictment, information, or criminal complaint pending against him in this state. The request shall be in writing addressed to the court in which the indictment, information, or criminal complaint is pending and to the prosecuting official charged with the duty of prosecuting it and shall set forth the place of confinement.

(2) It is the duty of the superintendent of the institution where the prisoner is confined to promptly inform each prisoner, in writing, of the source and nature of any untried indictment, information, or criminal complaint against him of which the superintendent has knowledge, and of the prisoner's right to make a request for final disposition thereof.

(3) Failure of the superintendent of the institution where the prisoner is confined to inform a prisoner, as required by subsection (2) of this section, within one year after a detainer from this state has been filed with the institution where the prisoner is confined shall entitle the prisoner to a dismissal with prejudice of the indictment, information, or criminal complaint.

C.R.S. 16-14-103. Duties of superintendent upon delivery of request

(1) Any request made pursuant to section 16-14-102 shall be delivered to the superintendent where the prisoner is confined who shall forthwith:

(a) Certify the term of commitment under which the prisoner is being held, the time already served on the sentence, the time remaining to be served, the earned time earned, the time of parole eligibility of the prisoner, and any decisions of the state board of parole relating to the prisoner; and

(b) Send, by registered mail, a copy of the request made by the prisoner and a copy of the information certified under paragraph (a) of this subsection (1) to both the court having jurisdiction of the untried offense and to the prosecuting official charged with the duty of prosecuting the offense.

C.R.S. 16-14-104. Trial or dismissal

(1) Within one hundred eighty-two days after the receipt of the request by the court and the prosecuting official, or within such additional time as the court for good cause shown in open court may grant, the prisoner or the prisoner's counsel being present, the indictment, information, or criminal complaint shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the prisoner's attorney and opportunity to be heard. If, after such a request, the indictment, information, or criminal complaint is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information, or criminal complaint be of any further force or effect, and the court shall dismiss it with prejudice.

(2) Any prisoner who requests disposition pursuant to section 16-14-102 may waive the right to disposition within the time specified in subsection (1) of this section by express waiver on the record after full advisement by the court. If a prisoner makes said waiver, the time for trial of the indictment, information, or criminal complaint shall be extended as provided in section 18-1-405 (4), C.R.S., concerning waiver of the right to speedy trial.

C.R.S. 16-14-105. Escape voids request

Escape from custody by any prisoner subsequent to his execution of a request for final disposition of an untried indictment, information, or criminal complaint shall void the request.

C.R.S. 16-14-106. Article does not apply

The provisions of this article do not apply to any person determined to be mentally incompetent by a court of competent jurisdiction.

C.R.S. 16-14-107. Prisoners to be informed of provisions of article

The superintendent shall arrange for all prisoners under his care and control to be informed in writing of the provisions of this article and for a record thereof to be placed in each prisoner's file.

C.R.S. 16-14-108. Construction of article

This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

APPENDIX B

Ohio Revised Code 2941.401

When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred eighty days after he causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of his imprisonment and a request for a final disposition to be made of the matter, except that for good cause shown in open court, with the prisoner or his counsel present, the court may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the warden or superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time served and remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the adult parole authority relating to the prisoner.

The written notice and request for final disposition shall be given or sent by the prisoner to the warden or superintendent having custody of him, who shall promptly forward it with the certificate to the appropriate prosecuting attorney and court by registered or certified mail, return receipt requested.

The warden or superintendent having custody of the prisoner shall promptly inform him in writing of the source and contents of any untried indictment, information, or complaint against him, concerning which the warden or superintendent has knowledge, and of his right to make a request for final disposition thereof.

Escape from custody by the prisoner, subsequent to his execution of the request for final disposition, voids the request.

If the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice.

This section does not apply to any person adjudged to be mentally ill or who is under sentence of life imprisonment or death, or to any prisoner under sentence of death.

PROOF OF SERVICE

I, Pamela B. Loginsky, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

On January 2, 2015, I deposited in the mails of the United States of America, postage prepaid, an envelop containing a copy of the Brief of Amicus Curiae Washington Association of Prosecuting Attorneys addressed to:

Erik Pedersen
Sr. Deputy Prosecuting Attorney
Courthouse Annex
605 South Third St.
Mount Vernon, WA 98273

Nancy Collins
Washington Appellate Project
1511 Third Avenue, Ste 701
Seattle, WA 98101

Suzanne Elliott
Washington Association of
Criminal Defense Lawyers
705 2nd Ave., Suite 1300
Seattle, WA 98104-1797

On January 2, 2015, electronic copies of the Brief of Amicus Curiae Washington Association of Prosecuting Attorneys was sent via e-mail to

Nancy Collins at nancy@washapp.org

Suzanne Elliot at suzanne-elliott@msn.com

Erik Pedersen at erikp@co.skagit.wa.us

Signed under the penalty of perjury under the laws of the state of Washington this 2nd day of January, 2015, at Olympia, Washington.


PAMELA B. LOGINSKY, WSBA 18096