STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

CASE NO. 2016AP2116 - CR

State of Wisconsin,
Plaintiff-Respondent,

v.

Case No. 2014CF000149
(Kenosha County)

James Charleston,
Defendant-Appellant.

ON APPEAL FROM A FINAL JUDGMENT OF CONVICTION AND SENTENCE
ENTERED IN THE KENOSHA COUNTY CIRCUIT COURT,
THE HONORABLE MARY K. WAGNER, PRESIDING

RESPONDENT BRIEF

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ISSUE

The Defendant-Appellant, Mr. James Charleston, petitions the Court of Appeals, District II, for leave to appeal from a final judgment of conviction and sentence in Kenosha County Circuit Court case #2014-CF-149, entered on April 28, 2016, by the Honorable Mary K. Wagner, presiding, in which Mr. Charleston entered a plea of guilty to Misdemeanor Theft as a Party to the Crime and received a monetary fine. The State, Plaintiff-Respondent, through

Kenosha County Special Prosecutor Lara Parker, responds to the Appellant's brief below.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State of Wisconsin, Plaintiff-Respondent, does not request oral argument or publication. This case involves only the application of established legal principles to the facts contained in the record. The briefs-in-chief fully address the issues raised on appeal and fully develop the relevant theories and legal authorities. The State does not request oral argument or believe it is necessary.

I. STATEMENT OF THE ISSUES PRESENTED

1) **What event triggers the start of the 180-day period in which a court must bring a prisoner to final disposition according to the Interstate Agreement on Detainers?**

2) **What remedy is available to a prisoner requesting speedy disposition when a custodial state violates provisions of the Interstate Agreement on Detainers?**

3) **Is Charleston owed a remedy for substantially complying with the prisoner-related requirements within the Interstate Agreement on Detainer when the custodial state violated the provisions if the Interstate Agreement on Detainers?**

4) **Is dismissal an appropriate or available remedy for Charleston by statute, caselaw, or public policy?**

5) **Did Charleston's conduct and consent waive his available time limits?**

II. STATEMENT OF FACTS NECESSARY TO UNDERSTAND THE ISSUES

1) PROCEDURAL HISTORY & FACTS OF THE CASE

On February 6, 2014, defendant James Charleston was charged with one count of Misdemeanor Theft and one count of Unauthorized Use of an Individual's Personal Identifying Information or Documents. A complaint was filed on February 6, 2014; on that same day, a bench warrant in the amount of $750.00 cash was issued for Charleston's arrest (S. App. 110-113). On March 12, 2015, Charleston was arrested on the warrant and subsequently made an initial appearance on March 13, 2014. Charleston was granted a $2,500.00 signature bond. A preliminary hearing was scheduled for April 2, 2014, for which Charleston appeared in person without an attorney. The matter was adjourned until April 24, 2014 for a status hearing. However, on April 24, 2014, Charleston failed to appear and a $2,500.00 cash bench warrant was issued for his arrest.

Following Charleston's failure to appear, the State learned Charleston was in custody in the State

of Illinois and had been in custody on April 24, 2014. The Kenosha County Sheriff's Department faxed a "Detainer/Extradition Request" to the Lake County Jail in Illinois on April 30, 2014, requesting that a detainer be placed on Charleston (S. App. 114-118). On June 9, 2014, Sheriff David Beth, Deputy Mark Conforti, ADA Andrew Burgoyne, and Judge Mary K. Wagner signed off on a Governor's Warrant. On June 18, 2014, Sherriff Beth was carbon-copied (cc'd) in on a letter to Illinois Governor Pat Quinn indicating that when Charleston is "ready for release" that Sheriff Beth was to be notified (S. App. 119). Following that letter, Sheriff Beth was again cc'd in on a letter dated July 11, 2014, and was directed to Sheriff Mark Curran Jr. of the Lake County Illinois Sheriff's Office (S. App. 120). That letter provided information to Sheriff Curran regarding the Governor's warrant issued for Charleston.

On January 13, 2015, Sgt. Eric Klinkhammer of the Kenosha County Sheriff's Department sent a fax to Southwestern Illinois Correctional Center requesting that Charleston be arraigned as a fugitive on our warrants and indicating that Wisconsin would extradite the defendant back to Wisconsin (S. App.

121). Following Sgt. Klinkhammer's January 13, 2015 request, no further action took place regarding this case until August 2015.

On August 12, 2015, Charleston wrote a letter to the Court in Kenosha County, Wisconsin (S. App. 122). In that letter, Charleston requested a copy of the complaint and the court record. A notation on the letter and in CCAP indicates that the complaint and court record were sent to Charleston, the defendant. *Id.* Nowhere in that letter does Charleston mention having previously filed a "Request for Final Disposition," and nowhere in that letter does Charleston make any inquiry as to the status of any previously filed "Requests for Final Disposition." (See *id.*)

Subsequently, on August 20, 2015, the State received a letter/packet from Warden Cecil Polley of Graham Correctional Center in Hillsboro, IL (S. App. 123). The cover letter is dated August 14, 2015, and the packet contains a "Request for Final Disposition" made by defendant Charleston dated August 12, 2015 (S. App. 123-125). It also contains the required "Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Informations, or

Complaints," dated August 17, 2015; the required "Certificate of Inmate Status" and "Offer to Deliver Temporary Custody," both dated August 14, 2015 (S. App. 126-132).

This packet is the first "Request for Disposition" that Wisconsin received from Charleston. Prior to this request, the State never received any other requests for final disposition from Charleston himself nor any Illinois wardens.

One-hundred eighty (180) days from August 20, 2015, is February 16, 2016.

Following receipt of the proper and required documentation in support of Charleston's August 2015 "Request for Final Disposition," DA Robert Zapf executed "Agreement on Detainers: Form V: Request for Temporary Custody" and "Agreement on Detainers: Form VII: Prosecutor's Acceptance of Temporary Custody Offered in Connection with an Inmate's Request for Disposition of a Detainer" (S. App. 133, 134). The forms were signed by Judge Mary K. Wagner on August 31, 2015.

After an exchange of required paperwork, Charleston was picked up from Illinois by agents of the Kenosha County Sheriff's Department on October 5,

2015. Charleston was brought to the Kenosha County Jail.

On October 6, 2015, a "return on warrant" hearing was held. A $1,000.00 cash bond was set. On October 7, 2015, defendant Charleston posted cash in the amount of $1,000.00 and was released from custody. On October 12, 2015, the Public Defender appointed Attorney David Celebre to the case. On October 15, 2015, Charleston appeared with Attorney Celebre for a preliminary hearing and subsequently waived the hearing. The State filed the Information at this hearing.

On November 20, 2015, a felony DA-Pretrial was held. Attorney Celebre brought up the issue of the purported November 2014 "Request for Final Disposition" for the first time, and Attorney Celebre indicated he would need time to look into it. A judicial pretrial was held on December 8, 2015. Attorney Celebre informed the court that he was going to file a motion to dismiss. The case was then scheduled for a second judicial pretrial on January 20, 2016. On January 7, 2016, the court moved the pretrial date from January 20 to January 21, 2016, due to a conflict (S. App. 135-136) Following this

adjournment, Attorney Celebre requested a "continuance" because defendant Charleston was having a "medical procedure" on January 21, 2016.

The judicial pretrial was then rescheduled to February 9, 2016. It was not until February 9, 2016 that the defense filed its motion to dismiss — 81 days after the defense's first mention that a motion to dismiss may need to be filed. This left only seven (7) days in the original 180-day time period, mentioned above, which was to expire on February 16, 2016.

Charleston's motion to dismiss was heard on March 24, 2016. Charleston provided an affidavit with attached documentation stating the following: that he was incarcerated in the Illinois State Prison system on June 9, 2014; that he made a proper, formal written request for final disposition on November 14, 2014; that the request was notarized and served to Warden Jeff Parker of the Southeastern Illinois Correctional Center; that the Illinois prison warden was obligated to send the request to the Kenosha County District Attorney's Office; that the request was not honored by Illinois and he remained in

custody; and that he made a second final disposition request on August 12, 2015 (Pet'r's A. App. 108-109).

On March 24, 2016, the court denied Charleston's motion to dismiss. Attorney Celebre requested additional time to review for possible appeal. A status conference hearing date was set for April 15, 2016.

The hearing was held on April 15, 2016. At that time, Charleston was taken back into custody by Illinois on detainer. Another status conference was scheduled for May 24, 2016.

The court received a report from Attorney Celebre and ADA Rosa Delgado that the case resolved, so the court cancelled the May 24 date and scheduled a plea and sentencing on April 28, 2016.

On April 28, 2016, the state filed an amended information. Charleston filled out and signed a "Plea Questionnaire/Waiver of Rights" form acknowledging that he decided to enter a plea of his own free will (S. App. 137-140). Charleston entered a plea of guilty to count one, misdemeanor theft as a party to a crime. The court imposed $200.00 in fines and $400.00 in extradition costs, to which Charleston stipulated.

2) TRIAL COURT'S DECISION & REASONING

At the March 24, 2016 hearing on Charleston's motion to dismiss, Judge Mary K. Wagner stated she did believe that Charleston gave a request for detainer to the warden of the Illinois prison he was in on or about November 14, 2014 (S. App. 102: 14-18). The court also agreed with Charleston that the state of Illinois did not take appropriate action to notify Wisconsin of his request (103: 5-9). The court stated, "I don't think I can hold the State of Wisconsin responsible for the inaction of the State of Illinois's warden" (103: 19-21). The court had questions about what could have happened to the request. The court ultimately denied Charleston's motion to dismiss (106: 10-11).

Further, the court points out issues with time limits and that 180 days already elapsed (105: 15-17). The judge states, "I don't think that when the Court acknowledges the defense attorney's request for time to file a motion so we can look at this issue, that that means I had to say, 'no, I won't let you . . .' and I have to force you to go to trial on that case. So I don't think I'm held responsible for requests for adjournments . . . and filing motions"

(105: 17-24, 6: 1). In response, Attorney Celebre stated, "I would concur with that" (106: 2-3).

Attorney Celebre requested a new date about three weeks out for a brief status (7: 7-9, 10-12). The court permitted this, and stated again directly to defendant Charleston, "we're outside the 180 days because of legal issues that need to be litigated on your behalf. So you understand that, Mr. Charleston, right? . . . And you want [Attorney Celebre] to study that issue, right?" (107: 14-17, 19-20). Charleston answered "[y]es, ma'am" to both of the court's questions. (107: 18, 21.) The court found that Mr. Charleston was "stipulating to continuing at this pace that we're at right now." (108: 10-12)

III. ARGUMENT

BECAUSE THE STATE OF WISCONSIN COMPLIED WITH THE INTERSTATE AGREEMENT ON DETAINERS ACT IN WIS. STAT. § 976.05, CHARLESTON'S CONVICTION SHOULD BE UPHELD

INTRODUCTION

Charleston asserts in his appeal, and in the motion to dismiss heard on March 24, 2016, that the 180-day time limit began running on November 14, 2014 when he initially served his written request for disposition to the warden. Charleston argues that the criminal complaint should have

been dismissed since over 180 days had lapsed, and he strictly or substantially complied with the prisoner-related requirements of the Interstate Agreement on Detainers Act in Wis. Stat. § 976.05(3).

Charleston's motion to dismiss was denied by Judge Mary K. Wagner after hearing arguments. The court agreed that the State of Illinois did not take "appropriate action to notify Wisconsin" of Charleston's request for disposition; but it properly concluded that it would not "hold the State of Wisconsin responsible for the inaction of the State of Illinois' warden" (S. App. 103: 5-7, 19-21).

Further, the court properly found that the case had extended beyond the 180-day time limit because of the defendant's own delays in the case. (*See* S. App. 105, 107).

PURPOSE

The purpose of the Interstate Agreement on Detainers Act (IAD), as codified in Wis. Stat. § 976.05, is 1) to protect prisoners by encouraging orderly and expeditious disposition of charges against a prisoner and determining the proper status of all detainers based on untried complaints, indictments, or informations, and 2) to provide "cooperative procedures" to effectuate a "more uniform and

efficient system of interstate renditions." *State v. Miller*, 261 Wis. 2d 866, 661 N.W. 2d 466 (Wis. Ct. App. 2003).

One of the protections offered by the IAD is dismissal of the receiving state's charges with prejudice. The IAD statute lists three situations when dismissal is an appropriate remedy: 1) if the prisoner requests final disposition under Article III and there is not a trial within 180 days (Wis. Stat. § 976.05(3)(d)); or 2) if the receiving state requests temporary custody under Article IV and there is no trial within 120 days of the prisoner's arrival (Wis. Stat. § 976.05(4)(e)); or 3) if the appropriate receiving authority refuses or fails to accept temporary custody of a prisoner (Wis. Stat. § 976.05(5)(c)).

Wisconsin's IAD requires that a defendant be "brought to trial within 180 days after the prisoner has *caused to be delivered* to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his or her imprisonment and his or her request for a final disposition to be made of the indictment, information or complaint." Wis. Stat. § 976.05(3)(a) (emphasis added).

1) **Receipt of the request for detainer by the State's prosecutor triggers the start of the 180-day period in which a court must bring a prisoner to final disposition according to the Interstate Agreement on Detainers.**

Wisconsin interprets the 180-day time-limit set by the IAD as beginning on the date the demanding state's prosecuting authorities receive the prisoner's request for final disposition. *State v. Whittemore*, 166 Wis. 2d 127, 479 N.W. 2d 566 (Wis. Ct. App. 1991). The court in *Whittemore* looked to caselaw in other IAD states and concluded that the phrase "'cause to be delivered' was equivalent to 'has delivered.'" *Id.* at 133 (citation omitted).

The United States Supreme Court has held the same: "that the receiving state's receipt of the request starts the clock." *Fex v. Michigan*, 507 U.S. 43, 113 S. Ct. 1085, 122 L. Ed. 2d 406 (1993). The Court conducted an in-depth analysis of contextual clues and the text of Article III, codified by Wisconsin at Wis. Stat. § 976.05(3), to determine whether the 180 days begin when the request for final disposition is delivered to the warden by the prisoner, or when the request is delivered to the prosecuting state. *Id.* at 47-52.

In *Fex v. Michigan*, the Court agreed with the State's position that it is *self-evident* "no one can have 'caused

something to be delivered' unless delivery in fact occurs." *Id.* at 47. Correspondingly, the Court rejected the argument that a prisoner's transmittal of an IAD request to prison authorities starts the 180-day period. *Id.* at 47-48. The Court observes, "nothing in law or logic suggests that it must be when he placed the request in the hands of the warden." *Id.* at 49. If the warden's receipt started the 180-day clock and "through the negligence of the warden, a prisoner's IAD request is delivered to the prosecutor more than 180 days after it was transmitted to the warden, the prosecution will be precluded before the prosecutor even knows it has been requested." *Id.* at 50.

The *Fex v. Michigan* Court considered such worst-case possibilities as "a warden, through negligence or even malice, can delay forwarding of the request and thus postpone the starting of the 180-day clock" or "the request gets lost in the mail and is never delivered to the 'receiving' state." *Id.* at 48, 49. The Court concluded that the prisoner may spend several hundred additional days under detainer, which may disqualify him from certain programs or create other disadvantages, but that is "no worse than what regularly occurred before the IAD was adopted." *Id.* at 50.

Furthermore, those disadvantages cannot be entirely avoided if transmittal to the warden is the measuring event. *Id.* A careless or malicious warden "may be unable to *delay* commencement of the 180-day period, but can *prevent it entirely,* by simply failing to forward the request." *Id.* at 50 (emphasis in original). That interpretation "assumes the availability of a reading that would give effect to a request that is never delivered *at all.*" *Id.* at 52 (emphasis in original). Therefore, "[i]t is more reasonable to think that the receiving State's prosecutors are in no risk of losing their case until they have been *informed* of the request for trial." *Id.* at 51 (emphasis in original).

In this case, Charleston asserts that he complied with the prisoner-related requirements of the IAD in his request for final disposition when he properly completed and served paperwork on November 14, 2014. Therefore, the case 180-day clock should have started on November 14, 2014 when he served his request to the Illinois prison warden.

As the *Whittemore* and *Fex* courts have held, the 180-day time limit commences running on the date the district attorney of the demanding state *receives notice* of the prisoner's request for final disposition. (See *Whittemore*,

166 Wis. 2d 127, and *Fex*, 507 U.S. 43.) Only after Charleston's second request was served to the Illinois prison warden on August 12, 2015, the District Attorney's Office of Kenosha County received Charleston's request on August 20, 2015. At that point, the 180-day time limit began.

Finally, Charleston does not offer proof that Wisconsin received his first request for final disposition which was dated November 14, 2014. And it is the general rule that "a prisoner who alleges a violation of the IAD bears the burden of establishing that the notice required under Article III(a) was given." *Whittemore*, 166 Wis. 2d at 135. Since Charleston did not establish that Wisconsin received notice of the first disposition request, he did not establish a violation by Wisconsin. The only notice received by the Kenosha County District Attorney's Office was on August 20, 2015, when the 180-day time limit began.

2) **No remedy is available to a prisoner requesting speedy disposition when a custodial state violates provisions of the Interstate Agreement on Detainers.**

At least one Wisconsin case examines a factual situation similar to Charleston's and resolves this question: When a custodial state violates provisions of

the IAD, what effect does this have on a prisoner requesting speedy disposition? See *State v. Townsend*, 295 Wis. 2d 844, 722 N.W. 2d 753 (Wis. Ct. App 2006).

Townsend discusses the custodial state's *notice requirements* within Wis. Stat. 976.05(3); and, in this case, Charleston is alleging a violation of the IAD because custodial state *did not properly forward* his first detainer request. But in both *Townsend* and this current matter, the petitioners agree that Illinois violated the IAD.

In *Townsend*, the State of Illinois violated the IAD because they did not inform the prisoner of the specific charges against him, which state lodged a detainer, or the procedures to request a final disposition of his charges in Wisconsin. *See id.* at 754-57. Petitioner Townsend argued that because of the notice violations, he was denied a prompt disposition in Wisconsin and the Wisconsin charges must be dismissed. *Id.* The court concluded that the problem was Illinois' failure to comply with the IAD. *Id.* at 757. So it asked the question: "given the IAD violation by the State of Illinois, was dismissal of the Wisconsin charge against Townsend the remedy?" *Id.* at 756.

The *Townsend* court commiserated with appellant Townsend, stating "[w]e understand the appellant's frustration with the Illinois prison system's ineptness that led to a clear violation of the IAD," and "any violation that did occur was due to the total disarray of the Illinois prison system." *Id.* at 758.

However, the *Townsend* court held that any violations of the IAD were the fault of Illinois, not Wisconsin. *Id.* The court also listed the only three (3) situations where dismissal is an appropriate remedy for IAD violations under Wis. Stat. § 976.05 ("Purpose" section above) none of which apply when a custodial state fails to meet the requirements of the IAD. *See generally, Townsend.* Therefore, the court believes "the extreme remedy of dismissing the *Wisconsin* charge against Townsend, which is not specifically mandated by the IAD, is not appropriate." *Townsend*, 295 Wis. 2d at 758 (emphasis in original). The court further explained that "it would be contrary to public policy to permit Townsend to escape prosecution on the crime he committed in Wisconsin." *Id.*

Only one of the three specific situations when dismissal is appropriate under the IAD could possibly apply to Charleston's case, and that is if the prisoner requests final disposition under Article III and there is

not a trial within 180 days (*see* Wis. Stat. § 976.05(3)(d)). However, as concluded above, the 180-day time limit did not begin until on August 20, 2015, when the Kenosha District Attorney's office received Charleston's second request for disposition. And the failure of the Illinois prison warden to deliver the first request to Wisconsin's prosecuting authorities was Illinois' fault, not Wisconsin's fault. This seems to be an agreed-upon fact within Charleston's appellate brief; also, this Circuit Court found that Illinois failed to take appropriate action to notify Wisconsin according to the IAD's requirements (Pet'r's Br. 6; S. App. 103: 5-9). Wisconsin, in all other ways, complied with the IAD as set forth in Wis. Stat. § 976.05.

Therefore, like in *Townsend*, the custodial state of Illinois did not properly follow the IAD when Charleston requested disposition in Wisconsin. Because there is no specific remedy provided by Wis. Stat. § 976.05 when a custodial state violates the provisions in the IAD, it would be contrary to public policy to allow the extreme remedy of dismissal of the charges against Charleston.

3) **Charleston is not owed a remedy for substantially complying with the prisoner-related requirements within the Interstate Agreement on Detainer when**

the custodial state violated the IAD's provisions.

Further, Charleston argues that he strictly and/or substantially complied with the prisoner-related requirements of the Interstate Agreement on Detainers Act in Wis. Stat. § 976.05. Within Charleston's appellate brief, it is asserted that he did everything required of him when he completed the form, had it notarized, and served it to the prison warden. Charleston argues that the "remedy of dismissal is mandated because the prisoner has done everything required of him by law, and everything within his control, to achieve a prompt disposition." (Pet'r's Br. 16-17).

The Court stated that "[t]he substantial compliance doctrine applies when a *defendant fails to meet the technical requirements* of the IAD due to intentional or negligent sabotage by government officials." *State v. Thomas*, 348 Wis. 2d 699, 834 N.W. 2d 425 (Wis. Ct. App. 2013), referencing *State v. Blackburn*, 214 Wis. 2d 372, 571 N.W. 2d 695 (Wis. Ct. App. 1977) (emphasis added). In Charleston's case, he does not allege that custodial government officials intentionally or negligently sabotaged *Charleston's own ability* to meet the technical requirements of the IAD. He alleges, instead, that the

Illinois' *government officials themselves* did not meet the statutory requirements of delivering the request to Wisconsin.

Rejecting this substantial compliance argument is "consistent with the legislative intent behind the purpose of Wis. Stat. 976.05(3)(a), which is to allow the prosecutor 'to give the matter prompt and proper attention and bring the prisoner to trial on any criminal charges lodged against him or her.'" *Thomas*, 348 Wis. 2d at 710-11. In order to give the matter prompt and proper attention, the State must receive actual notice of the prisoner's request — and in Charleston's case, Wisconsin did eventually receive notice on August 20, 2015.

Therefore, Charleston's substantial compliance alone in November 2014 does not warrant dismissal of this case because Wisconsin never received notice; and dismissal is not an available remedy until the State's prosecution is notified of the request for disposition.

4) **Dismissal is not an appropriate or available remedy for Charleston, by neither statute, caselaw, nor public policy.**

Charleston argues that he was subjected to "detrimental effects of the pending charges," such as adverse psychological impact, deprivation of an opportunity

to obtain a concurrent sentence, ineligibility for assignments, trustee status, or programs, etc. (Pet'r's Br. 17).

The United States Supreme Court addresses prisoners' arguments regarding the "detrimental effects" of a custodial state's inaction, which seem nearly identical to Charleston's argument here. In *Fex v. Michigan*, the petitioner "makes the policy argument that '[f]airness requires the burden of compliance with the requirements of the IAD to be placed entirely on law enforcement officials involved, since the petitioner has little ability to enforce compliance' . . . and that any other approach would 'frustrate the higher purpose' of the IAD, leaving 'neither a legal nor practical limit on the length of time prison authorities could delay forwarding a request.'" *Fex*, 507 U.S. at 52 (citations omitted).

In a similar discussion on public policy, Wisconsin has upheld the Supreme Court's reasoning within *Thomas*, stating that "[a] delay of trial is a far better public policy than an outright dismissal of charges." *Thomas*, 348 Wis. 2d at 710, referencing *Fex*, 507 U.S. at 50-51. Further, the court states that "[t]he purpose of the IAD is to prompt prosecutors to bring defendants to trial, which a prosecutor cannot do until he or she actually

receives notice of the speedy trial request." *Thomas*, 348 Wis. 2d at 710-11. Since the penalty for not honoring a defendant's rights to a speedy disposition under the IAD is high — dismissal with prejudice — the penalty "should not be imposed unless it is clear that the state was aware that a defendant was requesting to exercise his right to a speedy trial." *Id.* at 710.

In Charleston's case, the State's 180-day time limit may only begin upon actual notice of the request for disposition to Wisconsin's prosecuting authorities; therefore, the time limit did not commence until August 20, 2015. Additionally, there is no statutory remedy provided when the custodial state (Illinois) does not act upon a prisoner's request for speedy disposition in another state. And according to the United States Supreme Court and Wisconsin caselaw, it is contrary to public policy to allow dismissal of a complaint unless the issuing state has actual notice of a defendant's request for disposition.

If Charleston is owed a remedy for the delay caused by the inaction of Illinois' custodial officials, this respondent does not know what it is. He may wish to seek more information from the State of Illinois about any available remedies. Otherwise, the United States Supreme Court suggests that arguments of 'fairness' and 'higher

purpose' are more appropriately addressed "to the legislatures of the contracting States, which adopted the IAD's text." *Fex*, 507 U.S. at 52.

5) **Charleston's conduct and consent waived his available time limits.**

Because the IAD is statutory in nature, "rights under the detainer act . . . may be waived by a defendant's request for a procedure inconsistent with its provisions." *State v. Brown*, 118 Wis. 2d 377, 348 N.W. 2d 593 (Wis. Ct. App. 1984) (citations omitted).

Wisconsin courts have held that when a defendant asks for, and accepts, treatment inconsistent with his rights under the IAD, the defendant cannot then later assert those rights in an effort to win a dismissal. *Miller*, 261 Wis. 2d at 872. The *Miller* court determined that this sort of waiver can "be by conduct and does not require an express personal waiver on the record." *Id.* (citation omitted). In explaining their reasoning, the court expressed that a defendant "cannot be heard to complain about delay caused by his own conduct," and the defendant's conduct "need not be called delaying tactics to be identified as time consuming impediments to an early trial." *Id.* (citation omitted).

In this case, the defendant's attorney requested several adjournments. On November 20, 2015, Attorney Celebre stated there may be an issue with the request for disposition and he would need extra time to look into filing a motion to dismiss. At the judicial pretrial set for December 8, 2015, Attorney Celebre indicated he would be filing that motion and requested a second judicial pretrial which was set on January 20, 2015. After that date was adjusted to January 21, 2015 by the court, the defense requested a continued date because of Charleston's medical procedure. The second pretrial was then reset for February 9, 2016 — only seven (7) days from the 180-day time limit — at which time Attorney Celebre finally filed the motion to dismiss. The motion hearing was set for and heard on March 24, 2016.

At the March 24, 2016 hearing, the court raised the issues of having gone beyond time limits established by the second request for disposition. Because the State received Charleston's request on August 20, 2015, the 180-day time limit would have already expired on February 16, 2016. Charleston acknowledged this and consented on the record to going beyond the 180 days. Charleston indicated that he understood the time was necessary to prepare his

legal defense. A new status date was set for May 24, 2016.

The case resolved, and the plea and sentencing was moved up by request of the parties to April 28, 2016. Charleston entered a plea of guilty to misdemeanor theft as party to the crime, further indicating waiver of time limits. He no longer held to a request for speedy disposition since he proceeded to final judgment of his own free will, according to his signed plea form submitted to the court on April 28, 2016.

Therefore, over several instances of his own conduct and consent, Charleston cannot ask for dismissal based on the second request for detainer — which was the only request received by the Kenosha County District Attorney's office for which he had any remedy of dismissal available.

SUMMARY

The Interstate Agreement on Detainers, codified at Wis. Stat. § 976.05, allows for dismissal of complaints in three limited circumstances. Contrary to Charleston's argument, the factual situation here does not permit dismissal of his charges. As established above by Wisconsin caselaw and United States Supreme Court holdings, the 180-day time period in which a court must bring a

prisoner to final disposition begins only when the State's prosecuting authorities receive the prisoner's request for final disposition. In this case, the Kenosha County District Attorney's Office received the request on August 20, 2015.

The Circuit Court, Plaintiff-Respondent, and Defendant-Appellant all agree that the State of Illinois violated the provisions of the IAD by neglecting, whether intentionally or unintentionally, to forward Charleston's request to Wisconsin. However, Charleston seems to have substantially or completely complied with all of the prisoner-related requirements of the IAD. When Illinois did not send notice of a properly submitted request, that request could not be acted upon by Wisconsin. Substantial compliance by the prisoner does not, in itself, allow for dismissal when notice is not received. The remedy of dismissal is not available to Charleston in this case.

Further, Charleston's conduct and consent waived any available time limits regarding his second request. His defense attorney requested several adjournments; also, Charleston acknowledged on the record on March 24, 2016 that additional time was necessary to prepare his legal defense. After that, he voluntarily entered a plea of

guilty to misdemeanor theft as party to a crime. He has no dismissal remedy available for the 180-day time period between August 20, 2015 and February 16, 2016 because of this conduct and consent.

CONCLUSION

For the reasons stated above, the court should affirm the judgment of conviction.

Dated at Kenosha, Wisconsin, on August 25, 2017.

Respectfully submitted,

_____
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CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained within Section 809.19(8)(b) and (c) for a brief and appendix produced with a monospaced font. The length of this brief is 29 pages.

Dated this 25th day of August, 2017.

_____

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CERTIFICATION OF COMPLIANCE WITH RULE 809.19(2)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(2).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 25th day of August, 2017.

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