STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

NO. 2016AP2116-CR

STATE OF WISCONSIN,

Plaintiff- Respondent,

v.

JAMES CHARLESTON

Defendant-Appellant.

APPELLANT'S REPLY BRIEF

Appeal From A Final Judgment of Conviction and Sentence
Entered April 28, 2016,
Kenosha County Circuit Court Case No. 2014CF149,
The Honorable Mary K. Wagner, Presiding

James A. Walrath
State Bar No. 1012151
LAW OFFICES OF JAMES A. WALRATH, LLC.
324 East Wisconsin Avenue, Suite 1410
Milwaukee, Wisconsin 53202
(414) 202-2300

TABLE OF CONTENTS

TABLE OF AUTHORITIES
Cases cited

ARGUMENT

While the State concedes that Illinois, Charleston's custodial state, violated its Interstate Agreement on Detainers (IAD) with Wisconsin, after he requested prompt disposition of his Wisconsin charges, it contends that there is no remedy for the wrong that Charleston suffered; the State ignores recent case law about circumstances where custodial state officials "sabotage" a prisoner's request.

The State's brief concedes that Illinois violated the IAD in Charleston's case, when it failed to act on his request for prompt disposition of the Kenosha County charges. The State's brief notes that "Illinois did not properly follow the IAD when Charleston requested disposition in Wisconsin" (Respondent's Brief at 20), that "the delay was caused by the inaction of Illinois custodial officials" (Respondent's Brief at 24), and that "[t]he Circuit Court, Plaintiff-Respondent, and Defendant-Appellant all agree that the State of Illinois violated the provisions of the IAD" (Respondent's Brief at 28).

But the State then contends that, despite such violations, the circuit court was powerless to do anything about it, and it could not dismiss the charges for which Charleston sought prompt disposition. "The remedy of dismissal is not available to Charleston in this case." (Respondent's Brief at 28).

The State relies, in the main, on two cases to support its position: *State v. Townsend*, 2006 WI App 177, 295 Wis. 2d 844, 722 N.W.2d 753 and *Fex v. Michigan*, 507 U.S. 43 (1993). *Townsend*, however, is not supportive because it

dealt with a different, more preliminary custodial state violation of the IAD. There, Illinois officials had not given Townsend notice that Wisconsin had lodged a detainer against him. Here, Illinois' violation is more serious because it directly neglected Charleston's request for disposition. In *Townsend* Illinois ignored the fact that Wisconsin had lodged a detainer; but there was no request for disposition from Townsend. Hence, the *Townsend* court decided only that a dismissal remedy was not available because the custodial state's violation related to its failure to give Townsend notice of the receiving state's detainer. The court did not decide that a dismissal remedy was unavailable if the custodial state, as here, defied, ignored or sabotaged a prisoner's request for disposition. The violation of Charleston's IAD rights was greater than Townsend's because Illinois prison officials had actually been put on notice by Charleston that he wanted relief. Illinois prison officials sabotaged his efforts to obtain IAD relief. A remedy of dismissal is more justified in this case, compared to *Townsend*, because the violation was a direct sabotage of Charleston's IAD rights.

Judge Curley's dissent in *Townsend* offers another point: The IAD is an agreement between two "party" states, Illinois and Wisconsin. The Illinois-Wisconsin IAD clearly was intended to inure to the benefit of third parties, *e.g.*, prisoners held in Illinois against whom charges have been issued in Wisconsin and for whom Wisconsin has lodged detainers. Judge Curley would have decided

Townsend's case differently. She would have ruled that Illinois' IAD violation should not have been ignored and that Wisconsin, as a contractual "party state," should not have been "exempted" from the consequences of Illinois' IAD violation. Charleston urges this Court to adopt Judge Curley's reasoning in this case, given the greater, more direct violation of Charleston's IAD rights.

While “slippery slope” arguments often may be of little benefit for deciding legal issues, it would be worthwhile to ask: just how serious must Illinois’ violations of the IAD be, before Wisconsin courts should impose the remedy of dismissal? The State answers that no violation by Illinois or any other custodial state ever warrants dismissal of a detainee’s charges in Wisconsin. That would mean, if correct, that the duties that the IAD imposes on Illinois and other custodial states could just be ignored, rendering the IAD meaningless as far as custodial state duties are concerned. But Wisconsin criminal courts are not powerless to remedy violations of law occurring in other jurisdictions that impact the rights of Wisconsin defendants.[1]

The circuit court should have weighed the State’s interest in continuing its prosecution of Charleston, against his interests that are protected by the IAD.

---

[11] By analogy, Wisconsin courts will not fail to remedy violations of the Fourth Amendment rights of defendants who face criminal charges in Wisconsin where the prosecution relies on illegally discovered or seized evidence that was obtained by police officers in a neighboring state.

Justice Scalia's rigid, textualist approach in *Fex v. Michigan*, 507 U.S. 43 (1993) would deprive courts of their discretionary powers of dismissal when a prisoner's rights and interests outweigh the State's interests under the IAD. Had that procedure been applied here, the scales would have tipped in Charleston's favor. At the time the detainer was lodged against him, he faced a misdemeanor theft and a felony identity theft charge. After the five months of litigation on his IAD objections ended in late April, 2016, he was allowed to walk out of the courtroom with a small fine and misdemeanor conviction for theft. Had the rights and interests that were reviewed in April, 2016 been reviewed earlier, when he was first returned to Wisconsin in October 2015, the circuit court could have determined that his detention in Illinois without a timely resolution in Kenosha County, and the 11-month delay in returning him to Wisconsin, due to Illinois' IAD violations, was sufficient penalty alone to meet Wisconsin's prosecutorial interests, and those interests were outweighed by the 11-month violation of Charleston's IAD rights in obtaining a timely, and prompt resolution.

Wisconsin courts, using their discretionary powers have, for example, adopted the "prison mailbox rule" for the precise purpose of preserving the appeal rights of prisoners who substantially comply with appeal filing requirements, but are unable to file their appeals in a clerk of courts office directly. Their appeal rights are preserved, and are not lost, so long as they request appellate relief by

dropping their appeal papers in the prison mailbox, in place of the clerk of courts office. The key to the rule is that the prisoner has done everything within his or her power to start the appellate process, which is no different than a custodial state detainee dropping an IAD request for prompt disposition in a prison mailbox, directed to the attention of the warden; which is what Charleston did to start the transfer process. See, e.g., *State ex rel. Shimkus v. Sondalle*, 239 Wis. 2d 327, 620 N.W.2d 409 (Ct. App. 2000).

Finally, *Fex v. Michigan*, which is a 1993 decision, does not provide support for the State's position in the context of the facts in this case, given more recent rulings in *State v. Blackburn* 214 Wis. 2d 372, 571 N.W.2d 695 (Ct. App. 1997) and *State v. Thomas*, 2013 WI App 78, 348 Wis. 2d 699, 834 N.W.2d 425. Because the State has conceded that Illinois prison officials violated the IAD in this case, Charleston has demonstrated that he substantially complied with the IAD by lodging his request with the Illinois prison warden, yet that request was sabotaged, either by inaction that was negligent or intentional. Unlike Thomas, Charleston demonstrated that he met the Illinois statutes and rules governing a prisoner's service of papers on the warden, through a notarized statement and a certificate attesting to his compliance. There can be no confusion as to where fault lay in his case. It was, as the State concedes, with the prison's warden.

The circuit court should have imposed a remedy for Illinois' IAD violations, in the same way that Wisconsin courts have adopted the "prison mailbox rule," which provides a remedy for *pro se* prisoners who have failed to cause the delivery of their appeal papers to clerk of courts offices, and who rely instead on the prison mail system.

> [T]he pro se prisoner has no choice in the matter. He or she cannot travel to the filing office or even to the post office to have delivery certified. *Reliance must instead be placed wholly on the good faith of prison officials and employees to see to the timely forwarding of the documents to the designated offic*e. If this trust is violated, whether willfully or through neglect or simple inadvertence, the prisoner loses by default. . .. [The prison mailbox rule] . . . seems to us to be entirely consistent with the basic principles of fairness and equal treatment on which both our substantive and procedural laws are based.

State ex rel. Shimkus v. Sondalle, 239 Wis. 2d at 337-38. (Emphasis added.)

CONCLUSION

For the foregoing reasons, appellant Charleston respectfully requests that the decision and order of the circuit court be reversed and this matter be remanded with instructions that the criminal charges against him be dismissed.

Dated at Milwaukee, Wisconsin, September 14, 2017.

Respectfully submitted,

LAW OFFICES OF JAMES A. WALRATH, LLC.

Electronically signed by
James A. Walrath

State Bar No. 1012151

P.O. ADDRESS:
324 East Wisconsin Avenue, Suite 1410
Milwaukee, Wisconsin 53202
(414) 202-2300

RULE 809.19(8)(d) CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Rule 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 2059 words.

Electronically signed by
James A. Walrath

_____
James A. Walrath

RULE 809.19(12)(f) CERTIFICATION

I hereby certify that the text of the electronic copy of this brief is identical to the text of the paper copy of the brief.

Electronically signed by
James A. Walrath

_____
James A. Walrath

CERTIFICATE OF MAILING

I hereby certify pursuant to Wis. Stat. (Rule) 809.80(4) that, on September 14, 2017, I caused 3 copies of the Brief and Appendix of Appellant James Charleston to be mailed, properly addressed and postage prepaid, to the Wisconsin Court of Appeals, P.O. Box 1688, Madison, Wisconsin 53701-1688 and that three copies were served by mail on opposing counsel of record, Lara Parker, Special Prosecutor, Office of the Kenosha County District Attorney, 912 56th Street, Kenosha, WI 53140.

Electronically signed by
James A. Walrath

_____
James A. Walrath