IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK EUGENE PREST,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37689

FILED

JUL 31 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary (Count I) and one count of grand larceny (Count II). The district court sentenced appellant to serve a prison term of 16 to 72 months for count I, to run consecutive to his prison term in Arizona, and to serve a concurrent prison term of 16 to 60 months for count II. The district court then suspended execution of appellant's sentences and placed him on probation.

Appellant contends that the district court erred in denying his motion to dismiss because this remedy was mandatory, pursuant to Article V(c) and Article III(a) of the Interstate Agreement on Detainers (hereinafter IAD),[1] as Washoe County failed to bring him to trial within 180 days of his request for final disposition of the charges against him.[2]

[1]Nevada has codified the IAD at NRS 178.620. Article III(a) provides that a state that lodges a detainer against a prisoner in another jurisdiction must bring that prisoner to trial within 180 days after the prisoner "causes to be delivered" a request for final disposition of pending charges. Article V(c) sets forth the remedy for the State's failure to do so; namely, dismissal of the pending charges with prejudice.

[2]Pursuant to the plea agreement, appellant expressly reserved his right to appeal the district court's order denying his motion to dismiss.

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Appellant contends that he made a written request for final disposition of the charges on three separate occasions: (1) on August 19, 1997, when appellant completed three Arizona Department of Corrections forms;[3] (2) on August 31, 1998, when appellant sent both the Washoe County District Attorney and the Washoe County Clerk a proper person motion demanding a trial; and (3) sometime in late September 1998, when appellant again completed Arizona Department of Corrections forms.

We conclude that appellant's three written requests were insufficient to trigger the 180-day limitations period of the IAD with respect to the Washoe County charges, and thus the district court did not err in denying appellant's motion to dismiss. Our conclusion is based on the plain language of the IAD and the Supreme Court's interpretation of it set forth in Fex v. Michigan.[4]

It is well established that a condition precedent to the start of the 180-day limitations period set forth in Article III of the IAD is that a detainer based on outstanding charges in another state must have been lodged against the defendant.[5] A "detainer" is a "request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency,

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[3]Appellant completed several forms requesting final disposition of criminal charges pending in Carson City, Nevada, which had lodged a detainer against appellant on August 19, 1997. On December 8, 1997, appellant was extradited to Carson City, Nevada, and pleaded guilty to theft. The district court sentenced appellant to serve a prison term of 12 to 30 months to run concurrent to his Arizona sentence.

[4]507 U.S. 43 (1993).

[5]See State v. Wade, 105 Nev. 206, 208, 772 P.2d 1291, 1293 (1989).

or that the agency be advised when the prisoner's release is imminent."[6]

In the instant case, the Arizona Department of Corrections forms sent in August 1997 and appellant's motion demanding a trial sent in August 1998 could not have triggered the 180-day limitations period as a matter of law because Washoe County did not have a detainer lodged against appellant during this time period. Although Washoe County filed a criminal complaint, and subsequently issued a warrant for appellant's arrest in June 1997, there is no evidence in the record that Washoe County ever placed an informal hold or formal detainer on appellant prior to September 14, 1998. In fact, appellant testified that he did not even learn of the outstanding warrant in Washoe County until summer 1998, and was told by an Arizona department of corrections employee, on August 5, 1998, that Washoe County did not have a detainer against him. Likewise, Arizona Department of Corrections records indicate that Washoe County did not place a detainer on appellant until September 14, 1998. Accordingly, because a detainer is a condition precedent to the triggering of the 180-day limitation period and because Washoe County did not have a detainer lodged against appellant prior to September 14, 1998, appellant's two requests for final disposition made in August 1997 and August 1998 did not give rise to a remedy under the IAD.

In late September, after Washoe County lodged its detainer, appellant completed forms requesting final disposition of the charges against him. However, due to some confusion with respect to whether Washoe County had revoked its detainer, the Arizona Department of Corrections never

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[6]Fex, 507 U.S. at 44.

forwarded appellant's forms to Washoe County. Appellant argues that his late-September request for final disposition of the charges served to trigger the 180-day limitations period despite the fact that Washoe County never received his request. We disagree.

In Fex, the Supreme Court held that Article III(a)'s 180-day time period does not commence "until the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him."[7] In construing Fex, the Ninth Circuit has provided: "[I]t does not matter what the prisoner may or may not have done in an attempt to cause such delivery or how much or little delay there is in the delivery. Until actual delivery occurred, the 180-day period did not start to run."[8]

Here, because the forms appellant submitted to the Arizona prison officials were never actually delivered to the Washoe County district attorney's office and the Washoe County district court, we conclude that appellant's late-September request for disposition of the Washoe County charges did not give rise to any remedy under the IAD.

To invoke the protections afforded by Article III(a) of the IAD, a defendant must strictly comply with the IAD

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[7]Id. (emphasis added); McNelton v. State, 115 Nev. 396, 414, 990 P.2d 1263, 1275 (1999). The Fex court recognized that the textual interpretation of the IAD requiring actual delivery may lead to a "bad" result in that a "careless or malicious warden" could frustrate a prisoner's attempt at exercising his IAD rights, but that such fairness arguments are "more appropriately addressed to the legislatures of the contracting States." Id. at 50-52.

[8]United States v. Johnson, 196 F.3d 1000, 1002 (9th Cir. 1999).

notice requirements.[9] Here, the 180-day limitation period under Article III of the IAD did not begin until July 26, 2000, when Washoe County actually received appellant's request for final disposition of the charges against him. Appellant was brought to trial within 180 days thereafter. Therefore, the district court did not err in denying appellant's motion to dismiss.

Having considered appellant's contention[10] and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Young, J.

Leavitt, J.

Becker, J.

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

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[9]See, e.g., United States v. Dent, 149 F.3d 180, 186 (3d Cir. 1998).

[10]In his motion to dismiss, appellant also contended that dismissal was warranted because his constitutional right to a speedy trial was violated. Appellant does not raise this issue on appeal, except to note that the district court did not expressly rule on the issue. Because appellant fails to make any cogent argument with respect to his constitutional right to a speedy trial or cite any legal authority, we need not consider it. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).