

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KOBEAY QURAN SWAFFORD,

Defendant-Appellee.

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UNPUBLISHED

March 18, 2008

No. 268499

Wayne Circuit Court

LC No. 05-010897-01

ON REMAND

Before: Judges Zahra, P.J., and Bandstra and Owens, JJ.

ZAHRA, J. (*dissenting*).

I respectfully dissent from the majority's conclusion that the correspondence sent by the prosecutor's office to the United States Marshal on June 1, 2004, is not a valid detainer for purposes of the IAD. I conclude this correspondence became a valid detainer for purposes of the IAD no later than March 2, 2005, when it accompanied defendant to federal prison, was verified, and the prosecutor was notified that defendant was requesting disposition on the outstanding charges filed against him. Because I conclude the detainer is valid, I must, as noted in the majority opinion at page 8, "find that the provisions of the IAD were violated and that the convictions against defendant must be vacated." I would affirm the lower court's dismissal of the charges against defendant and remand this matter to the trial court with instructions that defendant's convictions be vacated.

The majority concludes the June 1, 2004 correspondence is not a valid detainer under the IAD because the prosecutor did not file it with the institution in which defendant was serving his federal sentence and there is "scant information indicating how the Bureau of Prisons received notification that defendant had outstanding criminal charges in Michigan." Majority opinion, p. 12. Although the June 1, 2004, correspondence was filed with the U.S. Marshal before defendant was imprisoned, it is without dispute that the correspondence followed defendant to federal prison, where a federal prison official verified "the request to lodge a detainer," the prosecutor's office caused the clerk of the court to certify the warrant and complaint, and the federal prison official subsequently sent the prosecutor a letter stating that "[a] detainer has been filed against this subject in your favor." Defendant's Application for Leave to Appeal to the Supreme Court, Exhibit 1.

The federal institution in which defendant was imprisoned regarded the detainer as lodged once it was verified, as evidenced by the sending of the detainer letter. Moreover, the prosecutor's conduct supports the conclusion that it also viewed the detainer as being properly

lodged, since it did nothing incongruous with the notice that a detainer had been filed in its favor. To the contrary, the prosecutor ultimately filed all the documents that would be consistent with the understanding that an IAD detainer had been lodged with the federal prison.

Having concluded the detainer against defendant was properly lodged with the Bureau of Prisons, defendant was entitled pursuant to art III(a) of the IAD, MCL 780.601, to be brought to trial within 180 days of the date he requested disposition of the charges that were the subject of the detainer. Here, the prosecutor failed to comply with requirements of the IAD. For these reasons, I would affirm.

/s/ Brian K. Zahra