[J-105-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	357 CAP
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Appellee	:	
	:	Appeal from the Judgment of Sentence
	:	entered on 9-4-01 in the Court of Common
v.	:	Pleas, Criminal Division of Lehigh County
	:	at No. 3716/1996.
	:	
JAMES T. WILLIAMS,	:	
	:	
Appellant	:	SUBMITTED: March 10, 2004

DISSENTING OPINION

MR. JUSTICE BAER **DECIDED: April 21, 2006**

Although the law often provides room for the courts to forgive procedural missteps, in some cases it affirmatively denies such discretion. The Interstate Agreement on Detainers Act (IADA or Act),[1] which requires dismissal with prejudice of any charges untimely tried, falls into the latter category. In my view, by conflating its analysis of the Act with the analysis of Pennsylvania's similar but distinct "Prompt Trial" rule,[2] which lacks the IADA's more demanding requirements and its mandatory

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[1] 42 Pa.C.S. § 9101.

[2] See Pa.R.Crim.P. 600 (formerly Pa.R.Crim.P. 1100; renumbered effective April 1, 2001). In the following opinion, I refer solely to Rule 1100, which applies to this case. The Rules, in any event, do not differ in any way material to the following analysis.

sanction, the trial court erred in declining to dismiss with prejudice the charges against Appellant, James T. Williams. The Majority, affirming on a similar basis, compounds the trial court's error by enshrining it as the law of this Commonwealth. This ruling, I fear, disserves the legislative intent underlying the long-lived and well-settled statutory scheme; creates considerable tension between Pennsylvania law and binding federal law on the same question; and overrules or materially abrogates prior decisions of this Court *sub silentio*. The only remedy called for under the IADA is dismissal. Such statutes are only as effective as courts' willingness to apply them resolutely in even the most unappealing of circumstances, and it is not for the courts to tailor the import of the law to suit its result. Thus, I respectfully dissent.

Before addressing the legal concerns animating my dissent, however, it is necessary to visit the procedural history of this case. On October 18, 1996, the Commonwealth filed a written complaint in the Court of Common Pleas of Lehigh County charging Appellant with criminal homicide, robbery, and criminal conspiracy. As of October 21, 1996, however, Appellant was in the custody of federal authorities pending disposition of federal charges associated with a bank robbery unrelated to the Pennsylvania charges. Upon conviction in federal court, Appellant was transferred to a federal correctional facility in Schuylkill, Pennsylvania. Following various preliminary matters, Appellant appeared, by leave of a United States Attorney, for his preliminary hearing on the charges pending in Pennsylvania. There, he waived arraignment and pleaded not guilty to all charges.

In January 1997, Appellant was sentenced by the federal court to approximately fifty-seven years in prison. He then was remitted to the federal prison at Lewisburg, Pennsylvania. The court of common pleas, meanwhile, listed a hearing and a pre-trial conference concerning Appellant's Pennsylvania charges, and set a trial date of

September 8, 1997. In March of 1997, however, the federal Bureau of Prisons determined that Appellant should serve his federal sentence at its facility in Florence Colorado (USP Florence); Appellant arrived at USP Florence on March 5, 1997. On June 6, 1997, Lehigh County lodged a detainer against Appellant, signaling Pennsylvania's intent to try Appellant on his outstanding charges.

Appellant, however, also faced unrelated homicide charges in New Jersey, which took precedence over the Pennsylvania charges. Federal authorities transported Appellant to New Jersey for trial on July 15, 1997. Following trial in New Jersey, Appellant returned to federal custody, arriving at USP Florence on February 4, 1999.

Almost immediately upon his return to Florence, Appellant prepared a petition under Article III of the IADA seeking disposition of the charges in Pennsylvania that were the subject of the Lehigh County detainer.[3] The Commonwealth received Appellant's IADA Article III petition no later than February 18, 1999. On that date, a

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[3] Article III of the IADA provides, in relevant part:

> (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have 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 imprisonment and his request for a final disposition to be made of the indictment, information or complaint. Provided, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

42 Pa.C.S. § 9101.

Lehigh County law enforcement officer testified, he consulted with an IADA coordinator to address Appellant's request.

In the months that followed, the Commonwealth's efforts to secure Appellant's presence for trial met only confusion and resistance. The principal disputes appear to have revolved around whether, where the prosecution is seeking the death penalty, the IADA provides the proper mechanism for transfer between jurisdictions. Questions over whether proper procedure required some variety of "executive writ" or agreement, a writ of *habeas corpus ad prosequendum*, or a simple request under the IADA crowded out that Appellant had invoked the IADA and that a 180-day clock was ticking.[4]

On August 13, 1999, while Lehigh County continued to pursue Appellant's transfer from federal custody for trial, the court of common pleas entered an order scheduling trial for September 27, 1999. On September 2, 1999, Appellant filed a motion seeking to continue the trial. On September 15, 1999, Appellant filed a motion to dismiss, the gravamen of which was his assertion that the Commonwealth had violated his right to a speedy trial. In September 1999, Appellant remained in federal custody. He did not arrive in Lehigh County until October 4, 1999.

On October 14, 1999, the trial court convened a hearing regarding Appellant's pre-trial motions. This hearing was followed by additional hearings in November 1999, and in February 2000. In February 2000, Appellant notified the court that he wished to waive his right to counsel and proceed *pro se*. On June 5, 2000, following an April 2000 hearing, Appellant's request was granted. On the same date, the trial court also granted Appellant's request for further hearing on his motion to dismiss. Hearings were

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[4] The trial court fully explicates the improbable difficulties encountered in seeking Appellant's transfer to Pennsylvania for trial. Tr. Ct. Slip Op., 3/26/01, at 8-14. While I presume good faith on the part of all involved parties, that does not alter the legal impact of the delay.

scheduled and rescheduled, and on two separate occasions in October hearings were convened for Appellant to present witness testimony in support of his motion. On November 29, 2000, while Appellant's motion to dismiss was still pending, Appellant, in response to court order, filed a letter brief arguing that the IADA required dismissal. On December 1, 2000, the trial court conducted a final hearing. On March 26, 2001, with Appellant's arguments under Pa.R.Crim.P. 1100 ("Prompt Trial") and the IADA before it, the trial court denied Appellant's motion. Although the dispositive order referred only to Rule 1100, the trial court addressed and ultimately rejected Appellant's IADA arguments. It is the trial court's erroneous treatment of these arguments, and the Majority's quiet ratification of the trial court's reasoning, that compels me to write.

The IADA is

> a compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State's outstanding charges against a prisoner of another State. As a congressionally sanctioned interstate compact within the Compact Clause of the United States Constitution, Art. I, § 10, cl. 3, the [IADA] is a federal law subject to federal construction.
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> A State seeking to bring charges against a prisoner in another State's custody begins the process by filing a detainer, which is a request by the State's criminal justice agency that the institution in which the prisoner is housed hold the prisoner for the agency or notify the agency when release is imminent. After a detainer has been lodged against him, a prisoner may file a "request for a final disposition to be made of the indictment, information, or complaint." Art. III(a). Upon such a request, the prisoner "shall be brought to trial within one hundred eighty days," provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. * * * If a defendant is not brought to trial within the applicable statutory period, the [IADA] requires that the indictment be dismissed with prejudice. Art. V(c).

New York v. Hill, 528 U.S. 110, 111-12 (2000) (some citations and internal quotation marks omitted); see Commonwealth v. Fisher, 301 A.2d 605 (Pa. 1973); see also

Cuyler v. Adams, 449 U.S. 433, 442 (1981) (holding that the IADA presents a question of federal law under the Compact Clause). Article IX of the IADA requires that the Act be "liberally construed so as to effectuate its purpose." "[A] primary purpose of the Agreement is to protect prisoners against whom detainers are outstanding." Cuyler, 449 U.S. at 448-49.

> [A] prisoner who has a detainer lodged against him is seriously disadvantaged by such action. He is in custody and therefore in no position to seek witnesses or to preserve his defense. He must often be kept in close custody and is ineligible for desirable work assignments. What is more, when detainers are filed against a prisoner he sometimes loses interest in institutional opportunities because he must serve his sentence without knowing what additional sentences may lie before him, or when, if ever, he will be in a position to employ the education and skills he may be developing.

Id. at 449 (quoting H.R.Rep. No. 91-1018, p.3 (1970); S.Rep. No. 91-1356, p.3 (1970); U.S.Code Cong. & Admin. News 1970, p. 4866); see also United States ex rel. Esola v. Groomes, 520 F.2d 830, 836-37 (3d Cir. 1975) ("The purpose of the provision . . . is to minimize the adverse impact of a foreign prosecution on rehabilitative programs of the confining jurisdiction. * * * * [T]he psychological strain resulting from uncertainty about any future sentence decreases an inmate's desire to take advantage of institutional opportunities."). This Court has noted the same concern for "prisoners' uncertainty resulting from unresolved charges pending in another jurisdiction." Commonwealth v. Montione, 720 A.2d 738, 740 (Pa. 1998) (citing United States v. Scheer, 729 F.2d 164 (2d Cir. 1984)); see id. at 740 n.1 (citing United States v. Mauro, 436 U.S. 340, 361 (1978)) ("[E]fforts at rehabilitation are thwarted due to the anxiety and apprehension a prisoner experiences when faced with outstanding charges in another jurisdiction."); Fisher, 301 A.2d at 607.

Article III of the IADA permits a prisoner to seek a temporary transfer to the jurisdiction that has filed a detainer for final disposition of outstanding charges in the transferee jurisdiction. A prisoner utilizing Article III must transmit his request to the prosecutor and the court in the detaining jurisdiction. See IADA Art. III(a). Receipt of these materials triggers the running of a 180-day clock that counts down the period during which the prosecution must commence its case. See Fisher, 301 A.2d 605. As noted in IADA Article V, absent limited exceptions discussed below, failure to bring the case to court within the prescribed time period requires dismissal with prejudice of the charges at issue. Id.

The IADA explicitly permits a court to toll the clock and specifies the means at the parties' and the courts' disposal to seek such a remedy. Specifically, the statute envisages a trial court's grant of a continuance "for good cause shown in open court, the prisoner or his counsel being present." IADA Art. III(a). This language has been held by federal courts -- and by this Court in Fisher, discussed *infra* -- to mean exactly what it says, granting no quarter from the requirement that a continuance be affirmatively sought in open court during the IADA's prescribed time limitations. See Birdwell v. Skeen, 983 F.2d 1332 (5th Cir. 1993); Stroble v. Anderson, 587 F.2d 830 (6th Cir. 1978), cert. denied sub nom Anderson v. Stroble, 440 U.S. 940 (1979); Fisher, 301 A.2d 605 (dismissing the charges notwithstanding that the prosecution sought a continuance on day 181). Thus, this determination of "good cause shown" cannot occur *post hoc*. When the prosecution fails to seek a continuance in compliance with IADA Article III within the 180-day time period triggered by the prisoner's request for final disposition, the law requires without qualification that we apply the statutory sanction. See Fisher, 301 A.2d 605. Indeed, courts time and again have rejected even proposed *de minimis* exceptions to the Act's clear requirements. See Alabama v Bozeman, 533

U.S. 146, 153-54 (2001) (explicitly rejecting, under IADA Article IV, the possibility of a *de minimis* exception where little or no prejudice befalls the prisoner based upon the IADA violation); Birdwell, 983 F.2d at 1339-40; Fisher, 301 A.2d 605.

Even if federal law were not sufficiently instructive, our own caselaw demonstrates the flaw in any analysis that upholds Appellant's conviction and sentence in the instant case. In Commonwealth v. Fisher, 301 A.2d 605 (Pa. 1973), this Court held that dismissal with prejudice of all charges was the mandatory statutory remedy for the prosecution's failure to bring prisoner to trial within the 180 days prescribed by IADA Article III(a). Upon receiving notice of five Pennsylvania detainers, while imprisoned in New Jersey, prisoner advised Commonwealth officials that he sought disposition of the outstanding charges in Pennsylvania under the IADA. Id. at 606. Notice was received on June 11, 1970. Id. Thus, the IADA time limit began to run on that date. Id. Although the prosecution wrote New Jersey authorities seeking to accept custody of prisoner on August 11, 1970, he was not actually remitted to Pennsylvania custody until September 28, 1970. Id. In October, prisoner received a preliminary hearing, and the criminal matter was bound over for a grand jury proceeding. Id. On December 9, 1970, 181 days after Pennsylvania officials received prisoner's IADA request for disposition of his charges, the prosecution sought a continuance until January 1971. Id. On December 11, prisoner filed a *habeas corpus* petition arguing that he was entitled to discharge because the Commonwealth failed to try him within the 180 days allowed by the IADA. Id. The trial court denied relief.

On appeal, this Court explicitly rejected the Commonwealth's argument that scheduling conflicts precluded its bringing defendant to trial within the prescribed time limit. Id. at 607. Further, we rejected the prosecution's reliance on a New Jersey case that permitted "the grant of any necessary or reasonable continuance at any time prior

to an actual entry of an order dismissing the indictment." Id. (citing State v. Lippolis, 262 A.2d 203 (N.J. 1970)). "In so doing," we held, "the court freighted the statute with considerations of prejudice and the lack thereof, emanations of which we fail to perceive and accordingly refuse to adopt." Id. "We read this enactment to provide that the action of continuing the matter *must be determined at or prior to the expiration of the one hundred and eighty (180) day period prescribed in the statute*." Id. (citing Commonwealth v. Martin, 282 A.2d 241 (Pa. 1971)) (emphasis added). Regarding the Commonwealth's arguments that the necessity of securing a particular witness and the burden of preparing a companion case against defendant precluded timely trial, id. at 607 n.5, we observed that, "[w]hile the Commonwealth might arguably have had good cause to obtain a continuance, it does not have, nor did it attempt to offer, an excuse for its dilatoriness in seeking the continuance." Id. at 607. We held that this fact, coupled to the mandatory nature of the IADA, compelled dismissal with prejudice of the outstanding charges.

Our decision in Fisher, moreover, followed earlier decisions of this Court under the IADA's predecessor statute. In Commonwealth v. Bell, 276 A.2d 834 (Pa. 1971), we ruled that not only did the prosecution's failure to bring defendant to trial within 180 days mandate dismissal, but that dismissal, under the terms of the then applicable statute, was self-executing and entirely divested the court of jurisdiction. Id. at 837-38. Accordingly, all motion practice that followed that expiration, whether initiated by defense or prosecution, was without consequence.[5] Id. at 838. "The clear language of

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[5] The statute then in effect, Act of June 28, 1957, P.L. 428, 19 P.S. § 881, *et seq.*, did not materially diverge at § 1(a) from Article III(a) of the current IADA, both setting forth nearly verbatim the same procedure under which a prisoner may request final disposition of outstanding detainers, and providing that, upon receipt of such request, the Commonwealth has 180 days to bring defendant to trial. See Bell, 276 A.2d at 835 n.3. Its remedy, however, was more strongly worded then than the present IADA's (continued…)

both statute and our unanimous opinion in [Commonwealth v. Klimek, 206 A.2d 381 (Pa. 1965)] compel[led]" dismissal of the indictment. Id. In Klimek, as well, we required dismissal where the 180-day period expired without a court-ordered continuance or defendant's agreement to postponement of his trial. "Since the statute was not complied with, the court lost jurisdiction to try the indictments and, under the clear mandate of the statute, the indictments must be dismissed." Klimek, 206 A.2d at 382.

In the case at bar, the trial court, in a footnote, stated that "the IAD was not violated here." Although a Pennsylvania official had a copy of Appellant's IADA request on February 17, 1999, it contended, Appellant failed to demonstrate

> that he complied strictly with the requirements of the IAD to invoke the 180 day time limit, see U.S. v. Dent, 149 F.3d 180 (3d Cir. 1998); Commonwealth v. Lloyd, 535 A.2d 1152 (Pa. Super. 1988), and is not seeking relief pursuant to the IAD. As further discussed infra, Pennsylvania's IAD coordinator never requested custody of Defendant.

Tr. Ct. Op., 3/26/01, at 6 n.5. These cases, however are distinguishable. Dent, for example, was not decided under the IADA. Furthermore, the defendant in Dent had delayed his trial through affirmative conduct (flight) entirely absent from the instant case. In Lloyd, the defendant filed his IADA request before he was actually

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remedy. Section 2 of the former act provided that, where trial is not commenced within the time provided, "no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment be of any further force or effect, and the court shall enter an order dismissing the same with prejudice." See Bell, 276 A.2d at 835 n.2. That said, the only distinguishing detail is the jurisdictional language of the former statute, absent from the instant statute. See IADA Art. V(c). A prisoner's entitlement to relief under the current IADA is no longer jurisdictional or self-executing. See Hill, 528 U.S. at 117 (holding that IADA protections may be waived). Even so, in the absence of waiver the language of Article V clearly requires dismissal, and in terms no less mandatory than Pennsylvania's predecessor statute.

incarcerated, a predicate condition for the Act's application. Here, again, this circumstance in no way informs the instant case.

Neither the trial court nor the Commonwealth asserts that notice failed in any way relevant to its purpose of notifying the Commonwealth of Appellant's desire to return to Pennsylvania to defend his outstanding criminal charges. Indeed, the Commonwealth testified that upon receiving Appellant's Article III notice a Lehigh County law enforcement officer called an IADA administrator to address the situation.[6]

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[6] Mr. Chief Justice Cappy, in his Concurring Opinion, relies upon the United States Court of Appeals for the Third Circuit's decision in Dent, the United States Supreme Court's decision in Fex v. Michigan, 507 U.S. 43 (1993), and other precedents to require Appellant's "strict compliance" with the activating conditions of IADA Article III and assign him the burden of demonstrating such compliance. Slip Op. at 3-4. This reading fails to acknowledge, however, the Dent court's recognition that in the Third Circuit less than "strict compliance" may be sufficient under certain circumstances. See Dent, 149 F.3d at 186-87. In Casper v. Ryan, 822 F.2d 1283 (3d Cir. 1987), the court noted that "[s]trict compliance with Article III may not be required when the prisoner has done everything possible and it is the custodial state that is responsible for the default." Id. at 1293. Rather, in Casper, the court aimed simply to ensure that an ambiguous or incomplete notice would not "create a trap for unwary prosecuting officials," thus undermining "Article III's systematic method of rapidly adjudicating charges against prisoners held in another jurisdiction." Id. at 1293 (internal quotation marks omitted). Critically, the United States Supreme Court itself has noted the adequacy of substantial compliance where the prosecution is on notice of a prisoner's invocation of the Act. See United States v. Mauro, 436 U.S. 340, 364-65 (1978) (holding that prisoner's requests for a speedy trial, notwithstanding his failure specifically to invoke the IADA in those requests, were "sufficient to put the Government and the District Court on notice of the substance of his claim"); see also Fex, 507 U.S. at 49-50 (triggering the IADA clock upon the prosecution's receipt of a prisoner's request rather than upon the prisoner's transmittal, in part to ensure "that the receiving State's prosecutors are in no risk of losing their case until they have been *informed* of the request for trial"). Given the Supreme Court's primacy in interpreting the IADA, any more strict reading cannot stand.

Even if Mauro were not conclusive against the imposition of strict compliance against Appellant, we are not presented with a case like Dent. In that case, the court ruled against the prisoner in part because his communications to prosecutors failed expressly to invoke the IADA. In this case, however, it is undisputed that the prosecutor (continued…)

Finally, prior to final disposition of Appellant's motion to dismiss, Appellant filed on November 29, 2000, a lengthy letter brief invoking the IADA and accurately characterizing how it applied in this case. Thus, the trial court's subsequent claim that Appellant did not seek the Act's protection is at best specious.[7]

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recognized the gravamen of Appellant's request in the first instance. Indeed, as discussed at greater length *infra*, within days of its undisputed receipt of Appellant's request for disposition under the IADA Article III, the prosecution contacted Pennsylvania's IADA coordinator, an act as unequivocal in its connotation as the IADA is in its consequence. To require uniformly strict compliance is inconsistent with binding interpretations of the Act and manifestly contradicts the Act's Article IX admonition that we must construe the Act liberally "to effectuate its purposes," one of which the Supreme Court has identified as the "protect[ion] of prisoners against whom detainers are outstanding." Cuyler, 449 U.S. at 448-49. Where, as here, the prosecution by its conduct manifests clear awareness of the invocation and applicability of the IADA, I would not punish the prisoner where the subsequent delay and failure to request a continuance under the Act falls squarely on the shoulders of authorities, over whom a prisoner necessarily has no control.

[7] In its opinion in support of its ruling rejecting Appellant's motion to dismiss, the trial court claims that "Both parties agree the applicable standard in this case is Pa. R. Crim. P. No. 1100." Tr. Ct. Op., 3/26/01, at 5 n.6. This assertion is highly problematic in light of Appellant's November 29, 2000 filing addressing itself solely to the claim that the IADA required dismissal of Appellant's conviction.

Nor does waiver for want of preservation apply in this case. Although the Act's protections are waivable, see Hill, 528 U.S. at 117 (quoting United States v. Mezzanatto, 513 U.S. 196, 206 (1995)) (finding that "the IAD 'contemplate[s] a degree of party control that is consonant with the background presumption of waivability'" (modification in original)), Appellant raised at every stage of this litigation his contention that the Act had been violated. In November 2000, in response to a court order dated October 25, 2000, Appellant extensively argued, *pro se*, that the prosecution had violated the time limit established in IADA Article III, and that the appropriate remedy was dismissal. The trial court, in its opinion denying Appellant's motion to dismiss, addressed the merits of the IADA argument at some length. Before this Court, as well, Appellant properly raises the issue. Brief for Appellant at 95-98; see Mauro, 436 U.S. at 364-65 (Prisoner "persistently requested that he be given a speedy trial. After his trial date had been continued for the third time, he sought the dismissal of his indictment . . . . We deem these actions . . . sufficient to put the Government and the District Court (continued…)

Similarly, the Commonwealth argues that Appellant was not in fact transferred to the Commonwealth under the IADA. The Commonwealth notes that in finally arranging to transfer Appellant to Pennsylvania custody, the mechanism adopted involved the withdrawal of the detainer and the issuance of an executive writ, or writ of *habeas corpus ad prosequendum*. This argument also is unavailing. Upon invocation, the IADA governs all subsequent proceedings pertaining to the underlying indictments or informations. See Mauro, 436 U.S. at 363 ("Once the Federal Government lodges a detainer against a prisoner with state prison officials, the Agreement by its express terms becomes applicable and the United States must comply with its provisions."); see also United States v. Schrum, 638 F.2d 214 (10th Cir. 1981) (form of writ inconsequential to IADA's application); accord United States v. Williams, 615 F.2d 585, 590 (3d Cir. 1980); United States v. Palmer, 574 F.2d 164 (3d Cir. 1978). Neither the prosecution nor the Majority disputes Appellant's initial invocation of IADA Article III. Once a prisoner or prosecuting authority initially has triggered the IADA by filing a detainer, any alternative writ simply constitutes a "written request for temporary custody" under the IADA. Mauro, 436 U.S. at 361. "Any other reading" of the IADA's time constraints "would allow the Government to gain the advantages of lodging a detainer against a prisoner without assuming the responsibilities that the Agreement intended to arise from such an action." Id. at 364 (footnotes omitted); cf. Scheer, 729 F.2d at 170-

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on notice of the substance of his claim."). By frequently invoking the Act's protections, Appellant put the prosecution and the trial court on notice that the Act's severe sanctions were in the offing. Especially insofar as the "relaxed waiver" doctrine applies to this capital case, a fact acknowledged by the Majority, see Maj. Slip Op. at 10 (noting that the abolition of "relaxed waiver" effected by Commonwealth v. Freeman, 827 A.2d 385 (Pa. 2003), applies only to cases not yet pending at the time of Freeman's filing), there is simply no basis on which to conclude that Appellant has failed to bring the IADA violation squarely before this Court and the court below.

71 (ruling in favor of the prosecution based on waiver, but declining to agree with the proposed rationale that the writ of *habeas corpus ad prosequendum* took the case outside the IADA). The prerogative to invoke IADA Article III lies with the prisoner, whose interests in the timely disposition of outstanding charges it endeavors to protect.

Considering its conviction that the IADA was neither properly invoked nor otherwise applicable in this case, the trial court nevertheless spent a great deal of time arguing that it does not require dismissal even if it applies. The trial court appears largely to rely on the intractable morass encountered, during the spring and summer of 1999, when Pennsylvania officials attempted to secure Appellant's presence to try his outstanding charges per his February 1999 demand. The trial court's detailed recital of the many communications that passed between Commonwealth and federal authorities amply demonstrates the confusion that infected the process. It does not, however, explain how the IADA permits even diligent prosecutors acting in good faith to deny Appellant's clearly invoked right to a timely trial because officials in various jurisdictions fail to understand or abide the law governing the use of detainers. See Mauro, 436 U.S. at 364.

The trial court sets forth dates that require dismissal notwithstanding any degree of prosecutorial diligence and federal obstruction. The trial court recognizes that Appellant's availability under the IADA commenced upon his return to USP Florence from New Jersey on February 4, 1999. In August 1999, trial was scheduled for mid-September. On September 2, 1999, Appellant sought a continuance to prepare his defense. Two hundred and ten days separate February 4, 1999, from September 2, 1999. If we identify as the start date February 18, 1999, when the Commonwealth acknowledged (and corroborated by conduct) its receipt of Appellant's IADA notice, the relevant span shrinks to 196 days; the one hundred eightieth day after February 18,

1999, fell on August 16, 1999.[8] The trial court, however, ruled that the period between February 4 and September 2, 1999, constituted excludable time due to the Commonwealth's diligence in pursuing Appellant's presence in Pennsylvania. Thereafter, it ruled, Appellant's various motions caused all delays, thus the delays constituted excludable time. In support of this ruling, the trial court relied on an analogy to Pa.R.Crim.P. 1100, Pennsylvania's "Prompt Trial" provision, which, in the absence of the IADA's mandatory language requiring a specific sanction, affords courts some latitude to forgive delays after the running of the relevant time limit.

The Majority, summarily acknowledging the gravamen of Appellant's argument, impugns his failure to recognize that "a trial court has the discretion to extend the deadline or exclude days 'for good cause shown.'" Maj. Slip Op. at 11 (citing Commonwealth v. Montione, 720 A.2d 738, 740 (Pa. 1998)). The Majority, however, fails to acknowledge that "good cause shown" under the IADA refers specifically to a showing in open court, the defense being present, of the necessity and reasonableness of a duly sought continuance prior to the expiration of the applicable IADA time limit. See Fisher, 301 A.2d 605; see also Birdwell, 983 F.2d 1332; Stroble, 587 F.2d 830.

The Majority's citation to Montione, however, is unavailing. In its parenthetical, the Majority summarizes Montione as follows: "IAD 'tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court . . . .'" Maj. Slip Op. at 11-12. Article VI(a) of the IADA addresses a prisoner's ability to stand trial. It provides that "the running of [the time period prescribed in Article III] 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." In Montione, this Court addressed the import of Article VI as a matter of first impression. 720 A.2d at 740. Observing a circuit split on the proper

[8] August 15, 1999, the actual one hundred eightieth day, fell on a Sunday.

interpretation of Article VI, we rejected the decisions of those courts that narrowly construe Article VI to apply only where a prisoner is physically or mentally incapable of standing trial. Id. Instead, "we [found] persuasive the analysis and interpretation of the courts that held that delay occasioned by the defendant is excludable." Id. at 741. Accordingly, we held that a prisoner, in filing pre-trial motions, may not seek IADA relief based on the delay the disposition of his own pre-trial motions causes. See also United States v. Whiting, 28 F.3d 1296, 1307 & n.9 (1st Cir. 1994) (noting that its own decisions, and a predominate fraction of federal circuits, generally toll the IADA's clock "during the time it takes to resolve matters raised by" the prisoner); accord Commonwealth v. Boczkowski, 846 A.2d 75, 83-84 (Pa. 2004); Commonwealth v. Martin, 282 A.2d 241, 243-44 (Pa. 1971); State v. Batungbacal, 913 P.2d 49, 56 (Haw. 1996).

The Majority's discussion omits to harmonize its reading of Montione with the holdings of this Court in Fisher, the United States Supreme Court in Hill and Mauro, and numerous other federal and Pennsylvania courts, which unwaveringly read "good cause shown" to require an affirmative request for continuance *before* the applicable IADA time limit has run. These cases consistently refuse to permit courts to justify delay based on a *post hoc* determination of good cause. Montione, moreover, does not contradict these holdings. The passage quoted by the Majority immediately follows language reaffirming the familiar construction of IADA Article IV to provide for a court-ordered continuance only upon good cause shown in open court. Montione, 720 A.2d at 740 ("[T]he court may grant any necessary or reasonable continuance for good cause shown in open court with the prisoner or his counsel present . . . .").[9] Even the selective

[9] I pause to note that the Majority mistakenly characterizes IADA Article IV as the relevant provision rather than Article III. Maj. Slip. Op. at 10-11 & n.5. Appellant, (continued…)

quotation offered by the Majority suggests Montione's infirmity as a categorical license to the trial court to excuse any prosecutorial misconduct leading to impermissible delay. "[A]s determined by the court" under the IADA has unequivocally been construed *in pari materia* with the requirement that a continuance be granted only where sought in open court.[10] See Fisher, 301 A.2d at 607.

Montione, in standing only for the proposition that, in filing motions, a prisoner accedes to the delay resolution of these filings incurs, simply does not reach the case at bar. During the relevant time period -- February 18, 1999, to August 16, 1999 -- Appellant did nothing to contribute to the delay of his trial, nor does the trial court or the Majority suggest otherwise. Appellant did not even *arrive* in Lehigh County until October 4, 1999, nearly two months after the 180-day period under IADA Article III had

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(…continued)
however, explicitly argues from Article III in its brief, and the trial court, where it to addresses the IADA argument, also focuses on Article III. While Article III provides a mechanism by which a prisoner may actively seek disposition of his outstanding charges, and affords the prosecution 180 days to bring prisoner to trial, Article IV provides a mechanism by which a party seeking to prosecute someone imprisoned in another jurisdiction may affirmatively seek to have the prisoner transferred to the prosecutor's jurisdiction. The principal difference between the two provisions is that, while Article III sets a 180-day time limit that is triggered by the detaining jurisdiction's receipt of prisoner's request for disposition, Article IV sets a 120-day time limit that is triggered by a prisoner's arrival in the detaining jurisdiction. Both, however, incorporate the same language requiring that a continuance be requested in open court during the running of the applicable time limit. Both mandate dismissal for failure to observe these requirements. No one disputes that Appellant invoked Article III. Accordingly, it is Article III that applies, not Article IV.

[10] Even where the prisoner affirmatively acts to delay his prosecution such that tolling is appropriate, it is not clear that the statute relieves the prosecution of the burden of seeking a continuance in open court, the prisoner and defense counsel being present, within the 180-day period. The Act's Articles III(a), VI(a), and IX, read *in pari materia*, might well be read to require it. Since this case does not present that question, however, it need not be taken up here.

expired. To read Montione as exonerating delays to which a prisoner in no way contributes, and thus to obviate the plain-language requirement that a continuance be granted only upon good cause shown in open court within the 180 days provided by IADA Article III, is to flout the statute's purpose of ensuring the prompt resolution of pending prosecutions and to "freight" the statute with precisely the subjective assessment we determined in Fisher had no part in an IADA inquiry. See Fisher, 301 A.2d at 607. I would not read Montione so broadly, especially in light of our clear mandate under Article IX to construe the statute consistently with its prophylactic purpose. See Cuyler, 449 U.S. at 448-49.

Underlying the trial court's ruling and the Majority's endorsement of it is the evident desire to borrow permissive rulings under Pennsylvania's "Prompt Trial" provision to mitigate the severe sanction demanded by the IADA where the failure timely to transfer a prisoner appears not to be a product of bad faith. This Court, however, has rejected the proposition that analyses under Rule 1100 are coextensive with those under the IADA, notwithstanding areas where they overlap due to their related purposes. See Montione, 720 A.2d at 744; cf. Hill, 528 U.S. at 118 n.2 ("[R]espondent's analogy to the federal Speedy Trial Act of 1974 . . . [is] inapt. The time limits of the Speedy Trial Act begin to run automatically rather than upon request . . .; dismissal may sometimes be without prejudice . . . ."); Birdwell, 983 F.2d at 1338 ("While the [federal and state] Speedy Trial Acts may provide some instruction on the IADA speedy trial provisions, they are certainly not controlling."). Montione, in fact, notes as a distinguishing feature the prejudice of any dismissal arising for failure to satisfy the IADA, implicitly acknowledging that the remedial scheme of the IADA is more absolute in its sanctions than Rule 1100 and repudiating any derogation of IADA sanctions by appeal to Rule 1100.

In this case, the Commonwealth does not dispute that it was on clear notice, effective no later than February 18, 1999, of Appellant's desire to be returned to Pennsylvania to stand trial on outstanding criminal charges. Indeed, the record reflects that a law enforcement officer on Appellant's case sought advice on February 18, 1999, from the Harrisburg IADA administrator, an obvious sign that the relevant authorities understood the import of Appellant's request. Based on a notice date of February 18, 1999, the Commonwealth was obligated by the IADA to bring Appellant to trial by August 16, 1999, or alternatively to satisfy one of the recognized exceptions to the IADA's time limits.[11] The prosecution's only recourse, upon realizing that administrative obstacles prevented Appellant's timely transfer under the IADA, was to seek a continuance in open court. This it did not do.

The prosecution makes out a persuasive case that it worked diligently to bring Appellant to Pennsylvania to be prosecuted on the outstanding charges, and that it was foiled at every turn. I find it difficult to believe that any trial court in this Commonwealth, faced with such a showing of good cause in open court, would deny the Commonwealth a continuance duly requested under the IADA. Indeed, the good-cause exception was fashioned for precisely this sort of situation. That a continuance almost certainly would have been granted upon timely motion, however, cannot vitiate the prosecution's failure to seek one. See Fisher, 301 A.2d at 607-08 ("While the Commonwealth might arguably have had good cause to obtain a continuance, it does not have, nor did it attempt to offer, an excuse for its dilatoriness in seeking the continuance."); Commonwealth v. Thurston, 834 A.2d 595, 599 (Pa. Super. 2003) ("[I]t is irrelevant that a continuance could or would have been granted. It is imperative that a continuance be

[11] Appellant's September 2, 1999 request for a continuance, which occurred after the IADA clock had run, simply does not affect this calculus. See Bell, 276 A.2d at 838.

obtained to extend the run-date for cause."); accord Commonwealth v. Mayle, 780 A.2d 677 (Pa. Super. 2001); Commonwealth v. Thornhill, 601 A.2d 842 (Pa. Super. 1992). Nor should the unfortunate result to which the prosecution's omission ineluctably leads us sway us from our effectuation of the IADA's mandate.

In Fisher, a case our predecessors on this Court wrote in language difficult to misconstrue, this Court held that

> the Legislature adopted the dismissal sanction not because a prisoner would be prejudiced at trial if trial were delayed more than 180 days after demand, but because such a sanction for failure to try defendant within a fixed, reasonable period of time after demand was regarded as essential to produce general compliance with the statutory mandate.

301 A.2d at 607. I am certain that the distinguished jurists then occupying this Court took no more pleasure than I would take now in effectuating, in the face of such serious charges, the ultimate sanction against the prosecution. But if Fisher illustrates nothing else, it is that, for over thirty years, the Commonwealth has had unequivocal notice of the consequences of non-compliance with the IADA. If the sanction does not apply in the most serious of cases, then it might as well not apply at all. I share with the Commonwealth frustration with the result mandated in these circumstances. My bias generally inclines me against dismissal and toward the decision of cases on their merits. Nevertheless, the explicit language of the IADA and this Court's caselaw cannot be ignored simply because it leads to an unsettling result. I would dismiss the charges before us with prejudice. Thus, I dissent.