IN THE UTAH COURT OF APPEALS

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Alex Ray Cota, Petitioner and Appellant, v. State of Utah, Respondant and Appellee.	)	AMENDED MEMORANDUM DECISION[1] (Not For Official Publication) Case No. 20050063-CA F I L E D (August 4, 2005) 2005 UT App 343

Second District, Farmington Department
The Honorable Michael G. Allphin

Attorneys: Alex Ray Cota, Draper, Appellant Pro Se
Mark L. Shurtleff and Christopher Ballard, Salt Lake City, for Appellee

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Before Judges Billings, Jackson, and Orme.

PER CURIAM:

Petitioner Alex Ray Cota appeals the trial court's dismissal of his Petition for Post-Conviction Relief. In his petition, Cota claimed that his counsel was ineffective because he talked to the prosecutor rather than seeking a ruling on whether the Davis County forgery charges, to which he pleaded guilty, should have been dismissed based on the Interstate Agreement on Detainers (IAD). In counsel's discussions, the prosecurtor offered a plea agreement, but indicated that the offer would be withdrawn if counsel further pursued the IAD issue. Cota also claimed, in his petition, that new evidence, i.e., the Board of Pardon's (Board) warrant, further demonstrates that the Davis County charges should have been dismissed. The trial court granted summary judgment in favor of the State.

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1. This Amended Memorandum Decision replaces the Memorandum Decision in Case No. 20050063-CA issued on May 26, 2005.

Cota was on parole from November of 2001 until May of 2003, when he failed to report to Adult Probation and Parole. At about the same time, Cota was charged by information with four forgery counts in Davis County. He was also charged with forgery and attempted theft by deception in Salt Lake County. Also in May of 2003, Cota went to California and was incarcerated on charges there. The Board issued a warrant for Cota's arrest and filed a detainer pursuant to the warrant. The Board's warrant alleged a parole violation of absconding from parole supervision, theft of a vehicle, and forgery. Cota was notified that a detainer had been filed. In response Cota filed a request for disposition based on the IAD. In the request, Cota indicated that the charges were pending in Salt Lake County, and he had the request sent to the Salt Lake County District Attorney's Office.

The Salt Lake County District Attorney's Office responded with a letter indicating that it would not be filing a detainer. No request was sent to Davis County, and Davis County never placed a detainer on Cota. The only detainer was from the Board.

A claim of ineffective assistance of counsel requires "two components" that must be satisfied to successfully make a claim. Strickland v. Washington, 466 U.S. 668, 687 (1984). First, Cota must show that counsel's performance was "deficient." Id. Second, Cota must demonstrate that the deficient performance of counsel "prejudiced the defense." Id. To demonstrate prejudice, Cota must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." State v. Archuleta, 747 P.2d 1019, 1023 (Utah 1987).

In order to determine if counsel's performance was deficient, we must consider whether counsel erred by failing to obtain a ruling from the trial court. Whether counsel erred by failing to obtain a ruling depends on whether Cota is correct that the Davis County charges could have been dismissed based on his IAD request. We determine that the Davis County charges could not have been dismissed based on the IAD request because the IAD was not triggered with respect to the Davis County charges.

Article III of the IAD provides that the IAD is only triggered if there is a detainer lodged and the inmate sends written notice to "the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction." Utah Code Ann.

§ 77-29-5, Art. III(a) (2003). With respect to the Davis County charges, Davis County never lodged a detainer and, therefore, the IAD was not triggered. Furthermore, Cota never sent the required notice to Davis County.[2] The request sent to Salt Lake County listed the offenses in the Board warrant, i.e., absconding, "grand theft auto," and forgery, indicating these charges were being pursued by the Salt Lake City Police Department. As a result, the trial court correctly concluded that the IAD did not apply to the Davis County forgery charges.[3]

It stands to reason that, if the IAD did not apply to the Davis County charges, counsel was not deficient in failing to obtain a ruling on the issue. Moreover, the failure to obtain a ruling did not prejudice Cota because there was no reasonable chance of a different result. In fact, as the trial court pointed out in its ruling, Cota's position may well have been worse had counsel obtained a ruling because of the threat to withdraw the plea offer if counsel pursued a ruling on the issue. Counsel, therefore, was not ineffective.

With respect to Cota's claim that new evidence, i.e., the Board's warrant, further demonstrates that the Davis County charges should have been dismissed pursuant to the IAD, the trial court correctly concluded the issue was meritless. The Board's warrant alleges violation of parole by absconding supervision, "theft of a vehicle," and "forgery." The charges pursued against Cota in Davis County were four forgeries. The Salt Lake County case involved one count of forgery and one count of attempted theft by deception, involving a forged or stolen check. Further, as the trial court correctly pointed out, the IAD is not applicable to Board detainers alleging parole violations. See State v. Kahl, 814 P.2d 1151, 1154 n.1 (Utah Ct. App. 1991). The IAD applies only to an "untried indictment, information, or complaint." Id.

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[2]The trial court based this finding on an affidavit of the Davis County Attorney. Cota did not dispute the affidavit.

[3]In a motion for reconsideration, Cota noted that the Board's "Warrant Request and Parole Violation Report" alleged a parole violation by committing the offense of receiving or transferring a stolen vehicle in Davis County. However, Cota concedes that this charge was not prosecuted against him by Davis County. References to that offense in the Board's warrant do not change our analysis or disposition.

The trial court's dismissal of the Petition for Post-Conviction Relief is affirmed.

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Judith M. Billings,
Presiding Judge

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Norman H. Jackson, Judge

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Gregory K. Orme, Judge