

IN THE UTAH COURT OF APPEALS

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Kimberly Rae Newbury,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20100185-CA	
v.)		
)		
Honorable James R. Taylor,)	F I L E D	
Fourth District Court Judge,)	(April 1, 2010)	
)		
Respondent.)	<table border="1"><tr><td>2010 UT App 76</td></tr></table>	2010 UT App 76
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Original Proceeding in this Court

Attorneys: Kimberly Rae Newbury, Dublin, California, Petitioner
Pro Se
Brent M. Johnson, Salt Lake City, for Respondent

Before Judges Davis, Thorne, and Voros.

PER CURIAM:

Petitioner Kimberly Rae Newbury seeks extraordinary relief in the nature of mandamus to compel Respondent Judge James R. Taylor of the Fourth Judicial District to dispose of charges that are the subject of a detainer issued by the State of Utah. Newbury is an inmate in a federal correctional institution in California. Respondent opposes the petition on grounds that Newbury has not satisfied the requirements of the Interstate Agreement on Detainers (IAD) and, therefore, has not triggered the 180-day period for disposition of pending charges.

Article III of the IAD 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 officers'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

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

Utah Code Ann. § 77-29-5 (2008). In February 2008, Newbury filed a motion for speedy trial and a request for action on her pending charges in the Fourth District Court. However, she did not cause either document to be delivered to the prosecutor, as required by the IAD.

A prisoner against whom a detainer has been lodged can "invoke the [IAD's] protections by filing a written request for disposition of the charges underlying the detainer with custodial officials." Crosland v. State, 857 P.2d 943, 945 (Utah 1993). The IAD then "requires that custodial official [to] forward the prisoner's request to the court and the prosecutor in the receiving state." Id. "Upon receiving the request, the receiving state must bring the prisoner to trial within 180 days." Id. In Crosland v. State, the Utah Supreme Court declined to issue a writ of mandamus against a Utah trial court based upon Crosland's claim that a trial court had failed to comply with the IAD's requirements. See id. Although Crosland had delivered a notice to his Idaho custodial authorities, the notice was not delivered to the Utah court and Utah prosecutor. See id. at 946. The Utah Supreme Court concluded "that the 180-day period could not have begun until Utah authorities actually received Crosland's request and received notice that there was a valid request for trial." Id. at 946. The Utah Supreme Court based its determination on the United States Supreme Court's holding in Fex v. Michigan, 507 U.S. 43 (1993), that "'the IAD unquestionably requires delivery' and 'the 180-day time period in Article III(a) of the IAD 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.'" Crosland, 857 P.2d at 946 (quoting Fex, 507 U.S. at 50).

Newbury has not demonstrated that her motion and her notice intended to invoke the IAD were ever delivered to the prosecutor. Therefore, the 180-day time period for disposition of charges did not commence to run. Accordingly, the petition for extraordinary relief seeking relief in the nature of mandamus is denied.

James Z. Davis,
Presiding Judge

William A. Thorne Jr., Judge

J. Frederic Voros Jr., Judge