IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

| | |
|---|---|
| STATE OF DELAWARE, | ) |
| v. | ) ID # 0206019470 |
| | ) |
| JAMES M. FARROW, | ) |

# O R D E R

Upon Defendant's Motion to Dismiss. Denied.

Submitted: May 13, 2005
Decided: June 3, 2005

Before the Court is James M. Farrow Jr.'s May 13, 2005 Motion to Dismiss for failure to comply with the Delaware Uniform Agreement on Detainers (hereinafter "UAD"), codified at 11 *Del.C.* §§ 2540-2550, in violation of his rights to a speedy trial. James M. Farrow Jr. ("Defendant") argues here that the State failed to bring him to trial within 180 days of his written request for a final disposition from Delaware authorities, as required by the UAD. Therefore, the Defendant moves that the indictment against him be dismissed. The motion is denied.

***I. Facts and Procedural History***

Defendant was arrested on June 22, 2002, and subsequently charged with Robbery in the First Degree, Assault in the Second Degree and Unlawful Imprisonment in the Second Degree for incidents occurring on June 16, 2002 in Seaford, Delaware. The Defendant is currently serving a 12 year sentence in the State of Maryland which commenced on June 27, 2002.

On December 23, 2003, Defendant was notified by Maryland officials of a detainer placed on September 3, 2002, by the Delaware Superior Court as to the charges pending in this case. On December 23, 2003, Defendant signed the forms to request trial in the State of Delaware on these charges. Maryland authorities sent these documents to the Superior Courts in Kent and Sussex Counties, which were received in Delaware by court personnel on January 4, 2004.

As both parties recognize, at this time the Maryland authorities did not forward these documents to the Delaware Department of Justice, the prosecuting authority for the State of Delaware. The information contained in Exhibits B and C to Defendant's motion show that the papers were not sent to the Delaware Attorney General's Office through inadvertence. After learning of the Maryland official's failure to send these documents to the Delaware prosecuting authority, the Defendant petitioned in Maryland for a Writ of Habeas Corpus requesting dismissal of the Delaware detainers. Defendant's petition was denied by the State of Maryland. The Defendant's request for a final disposition was, again, sent to the Superior Court and, for the first time, to the Delaware Department of Justice. The Defendant's request was addressed to M. Jane Brady, the Attorney General. It was received by the Department of Justice on December 16, 2004 as shown on the returned receipts for the certified mail. Thereafter, trial was set for June 13, 2005.

***II. Discussion***

The issue is whether the Defendant is entitled to a dismissal of the charges where, through no fault of his own, actual notice was not given to the Delaware prosecuting authority and his right to a trial was delayed.

Under the UAD, "prisoners incarcerated in a foreign state who have charges pending in Delaware have specific rights to a trial in Delaware within 180 days of the giving of proper written notice . . . ." *State v. Davis*, 1993 WL 138993 (Del. Super. Ct.), *citing,* 11 *Del.C.* § 2542. The

UAD is clear that a prisoner having been charged with a crime in Delaware while held in another state "shall be brought to trial within 180 days after the prisoner 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 imprisonment and the request for a final disposition to be made of the indictment, information or complaint . . . ." 11 *Del.C.* § 2542(a). Additionally, the UAD meticulously spells out that notice must be given "by the prisoner to the Commissioner of Correction or other official having custody of the prisoner, who shall promptly forward it together with the certificate *to the appropriate prosecuting official and court* by registered or certified mail, return receipt requested." *Id.* § 2542(b) (emphasis added).

The State of Delaware requires that the prisoner give actual notice to the court and prosecutor of his request for a trial before his right to a trial within 180 days vests. Stated clearly in the UAD, "written notice shall not be deemed to have been caused to be delivered to the prosecuting officer and the appropriate court of this State…. until such notice or notification has actually been received by the appropriate court and by the appropriate prosecuting attorney of this State." *Id.* § 2542(g). Before1981, the statute required no such actual notice. Then the legislature added § 2542(g) to prevent charges being dismissed, where a trial request was "lost in another state's prison system or in the mails." Synopsis to H.B. No. 108 of the 131st General Assembly, 63 Del. Laws Ch. 32.

In this regard, the Legislature wanted to prevent a prisoner from receiving "the benefit of a 'technical' non- compliance with the law" and, therefore, the right to dismissal vests only where the "prosecutor is actually aware of the request and fails to act." *Id.* This policy has been recognized by the United States Supreme Court in *Fex v. Michigan,* 507 U.S. 43, 50-51 (1993). In *Fex*, the Court held that the phrase "caused to be delivered" in the Interstate Agreement on

Detainers required actual notice to the parties while recognizing that the state should not bear the risk of dismissal based on negligence of prison officials.[1] *Id.* at 50-51.

The Delaware case law requires that a defendant adhere to the procedural requirements of the UAD in order to perfect his right to a trial within 180 days. Just as a prisoner cannot ignore sending the request through prison officials to trigger his trial right, he cannot also fail to give actual notice to both the prosecuting agency and appropriate court. *See Isenhower v. State*, 516 A.2d 482 (Table), 1986 WL 17835 (Del.) (UAD requires actual notice to both prosecuting attorney and appropriate court before the 180 day period begins to run); *Beebe v. State*, 346 A.2d 169 (Del. 1975) (Prisoner must submit the request through the prison officials having custody of him).

The Defendant incorrectly relies on *Pittman v. State,* 301 A.2d 509 (Del. 1973), for the proposition that he is entitled to a dismissal of the charges against him. In *Pittman*, the Delaware Supreme Court dismissed charges when the notice requirement was frustrated by Maryland and Delaware officials. 301 A.2d at 512-13. The Defendant's reasoning is misplaced in several areas. *Pittman* is distinguishable on its facts where, in that case, Maryland and Delaware authorities mistakenly processed the request for trial. *Pittman* also was decided before the Legislature added § 2542(g), requiring actual notice to the prosecuting authority. The Court in *Pittman* believed that

[1] "More importantly, however, the worst-case scenario under petitioner's interpretation produces results that are significantly worse: If, through negligence of the warden, a prisoner's IAD request is delivered to the prosecutor more than 180 days after it was transmitted to the warden, the prosecution will be precluded before the prosecutor even knows it has been requested. It is possible, though by no means certain, that this consequence could be avoided by the receiving state court's invocation of the "good-cause continuance" clause of Article III(a) --but it seems to us implausible that such a plainly undesirable result was meant to be avoided only by resort to the (largely discretionary) application of that provision. It is more reasonable to think that the receiving State's prosecutors are in no risk of losing their case until they have been *informed* of the request for trial." *Fex v. Michigan*, 507 U.S. at 50-51. Given the similarity of the Legislation, this reasoning is instructive.

the State should bear the risk of dismissal when there is a mistake in processing a request. *Id.* In 1981, the General Assemby signaled an opposite conclusion. In the House report, *Pittman* is cited as the reason for the amendment which requires actual notice to the prosecutor before a case can be dismissed. Synopsis to H.B. No. 108 of the 131st General Assembly, 63 Del. Laws Ch. 32. In the context of this case, the policy rationale in *Pittman* does not survive this change. The State must bear the risk of dismissal only in cases of actual notice.

***III. Conclusion***

The Delaware Department of Justice, the prosecuting agency in the State of Delaware, did not receive actual notice of the Defendant's request for a trial until December 16, 2004. Therefore, the Defendant's previous requests for a trial to the Superior Court of Kent and Sussex Counties on January 4, 2004 did not entitle him to a trial within 180 days or to obtain dismissal of the charges against him. In this case, trial has been set for June 13, 2005. This is within the 180 day requirement set forth by the UAD. Considering the foregoing, the Defendant's motion for dismissal of charges is denied.

**IT IS SO ORDERED.**

Richard F. Stokes, Judge

cc: Prothonotary
Paula T. Ryan, Esquire
Carole J. Dunn, Esquire