



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,433-03

EX PARTE DARRYL B. WELLS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
FROM BEXAR COUNTY**

Johnson, J., filed a statement dissenting to the denial of relief.

DISSENTING STATEMENT

In his application for a writ of habeas corpus, applicant asserts that he received ineffective assistance of counsel because his attorneys did not pursue dismissal of charges based on a violation of the Interstate Agreement on Detainers Act (IADA), a congressionally sanctioned compact that both states involved here, Texas and Ohio, have adopted. *See* Texas Code of Criminal Procedure Art. 51.14. The purpose of the IADA is “to provide for the speedy disposition of charges filed in one jurisdiction against prisoners who are serving sentences in another jurisdiction.” *Morganfield v. State*, 919 S.W.2d 731,733 (Tex. App.—San Antonio 1996). A prisoner in jurisdiction A may request final disposition of untried charges in jurisdiction B by giving written notice to the warden

in jurisdiction A, who forwards the request, along with a certificate containing information about the prisoner's current confinement in jurisdiction A, to the prosecuting officer and the appropriate court in jurisdiction B. *State v. Votta*, 299 S.W.3d 130, 134-35 (Tex. Crim. App. 2009). The prisoner must then be brought to trial in jurisdiction B within 180 days from the date on which the prosecuting officer and the appropriate court in jurisdiction B receive from jurisdiction A the required paperwork requesting final disposition.¹

The only part of this process in which the prisoner has any control is in filing the proper paperwork with the warden in jurisdiction A. After that, he must trust in the proper workings of the system. In this case, the system did not work properly, through no fault of this applicant, and because the system failed to perform as it should have, he was denied a hearing on his IADA claims.

When applicant requested extradition and prompt resolution of his Texas charges, the authorities in jurisdiction A, the state of Ohio, mailed the required paperwork to the authorities in jurisdiction B, Bexar County, Texas, on October 2, 2006, and the paperwork was signed for by Texas authorities on October 9, 2006. Assuming that no requests for an extension were granted, applicant should have been brought to trial no later than April 7, 2007. Applicant's trial began in August of 2008, sixteen months after the date required by IADA.

At the hearing on remand, the District Attorney's Office's produced its file, which contained the proper paperwork to invoke the provisions of the IADA: a waiver of extradition,² a copy of the Texas detainer in Ohio, an IADA notice, and a request to proceed on the Texas charges. It remains

¹ Exceptions exist pursuant to which extensions may be granted. *See* TEX. CODE CRIM. PROC. Art. 51.14, ART. III.

² The waiver of extradition from Ohio to Texas was originally signed by applicant on an unknown date in 2002, filed stamped in Cuyahoga County, Ohio, on February 28, 2003, and "was faxed by [sic] Bexar County Sheriff by Cuyahoga County Sheriff on 8-24-04." Supplemental Application at 14-15.

unexplained why, if the proper papers were received and filed by the District Attorney, the appropriate district court did not also receive and file a copy of those same papers.

During this time, applicant had three attorneys. The first filed a motion to dismiss, based on the state's failure to comply with the IADA, but that attorney did not pursue the motion to a ruling and then withdrew. The second attorney erroneously thought that the first attorney's IADA motion had been denied, and he also failed to pursue the motion to a ruling and then withdrew. The third attorney reviewed the IADA documents that he got from applicant, but did not find those documents in the court's file, so he took no action. Applicant's copies were, of course, not file marked, as the documents were transmitted to Bexar County by the warden in Ohio, not hand-delivered by local counsel to the Bexar County Clerk's Office. Appellate counsel was aware of the IADA claims, but she could not raise them on appeal because they had not been litigated in the trial court.

At every turn after applicant's IADA paperwork left Ohio, the system failed. His first attorney withdrew without pursuing his IADA motion to dismiss to a ruling. The second attorney erroneously assumed that the first had pursued the motion to the ruling, did nothing, and also withdrew. The third attorney saw copies of applicant's IADA papers, but once again, the applicant's claims were not investigated nor a ruling obtained. The District Attorney's Office had copies of the IADA papers. All of applicant's attorneys knew that such a claim had been made yet, apparently, none tried to find out why the District Attorney had the required papers but the district court did not.

The writ application contains, at page 55, a letter from the Marion [Ohio] Correctional Institution, dated March 29, 2010.

This letter is in regards to your inquiry regarding your IAD paper work. I have copies of the certified receipts showing the paperwork was mailed to Texas on October 2, 2006, was received and signed by the receiving state officials. The final paperwork

was handled by the Extradition coordinator for the State of Texas in Austin, TX. All copies were sent, delivered, and processed within the appropriate timeframe.

I am also aware that you were released to the state of Texas from our facility on said detainer for these charges on Nov. 11, 2006. Hopkins County^[3] and Bexar County both had copies sent to them, as well as the District Attorney's office. I hope that this answers your questions and concerns. If Bexar County has any question, they may contact our office directly with their concerns.

From this letter, it is reasonable to assume that someone in Bexar County received the district court's copy and should have placed it in the court's file on applicant's charges, yet no IADA papers were placed in it. Even though the District Attorney has no duty to investigate an IADA claim unless raised by defense counsel, I find it curious that no such conversation seems to have occurred.

In sum, the system went awry through no fault of applicant. We not infrequently grant relief when the system malfunctions without fault attributable to an applicant: ineffective assistance when attorney files a notice of appeal late or not at all, fails to notify an appellant that the court of appeals has disposed of the appellant's appeal, or fails to advise an appellant of the right to file a *pro se* petition for discretionary review; papers placed in the wrong file in the clerk's office; proof of mailing provided, yet no record of the item being received by TDCJ; records lost in natural disasters. The concern here is not whether applicant had a meritorious claim, but rather that he was denied an opportunity to litigate that claim.

I respectfully dissent.

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³ This charge was pending in Bexar County, but applicant also had charges pending in Hopkins County, which timely disposed of those charges, well within IADA time limits, on November 22, 2006.