IN THE
TENTH COURT OF APPEALS

No. 10-17-00262-CR

IN RE DAVID WAYNE UNDERWOOD

Original Proceeding

MEMORANDUM OPINION

In 2015, Underwood filed a request pursuant to the Interstate Agreement on Detainers Act, the IADA, to have pending State charges adjudicated. Roughly six months later, Underwood filed a motion to dismiss charges pending in Johnson County, Texas, although he did not identify those charges in the petition he has filed with this Court.

We requested a response from the real party in interest, the State of Texas, through the Johnson County district attorney, and from the Respondent, the trial court judge. The State of Texas did not respond. The Respondent submitted a letter that essentially confirmed that Underwood had filed a request under the IADA on November 9, 2015 and a motion to dismiss pending charges on June 27, 2016. The Respondent explained that

because Underwood had not served the documents on the trial court, and had failed to request any type of setting on his original IADA request or his motion to dismiss the untried charges, the trial court was simply unaware of the request and motion.

Underwood has not provided this Court with a sufficient record for us to identify whether he has complied with the IADA by serving the proper parties, or taking the proper steps to have his request or his motion ruled upon. *See, e.g.* TEX. CODE CRIM. PROC. ANN. art. 51.14, Sec. III(a), (b) (West 2006) (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 his imprisonment and his request for a final disposition …;" "the request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner…;" and the "…official having custody of him… shall promptly forward [the prisoner's request] together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested."). *See also* TEX. R. APP. P. 52.3(k); 52.7. In a mandamus proceeding such as this, we do not tell the trial court how to rule, but rather, in an appropriate case, that a ruling must be made. *See State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987); *In re Salazar*, 134 S.W.3d 357, 358 (Tex. App.—Waco 2003). While it appears that more than an adequate amount of time has passed such that the Respondent should be expected to have ruled on a pending request or motion, the IADA is a very technical statute that requires strict compliance to obtain its benefits. *See Fex v. Michigan*, 507 U.S.

43, 52, 122 L. Ed. 2d 406, 113 S. Ct. 1085 (1993); *United States v. Henson*, 945 F.2d 430, 434 (1st Cir. 1991). *See also In re Ryan*, No. 10-04-00128-CR, 2004 Tex. App. LEXIS 9393, at *2-45 (App.—Waco Oct. 20, 2004, orig. proceeding) (Gray, C.J., dissenting) (not designated for publication).

At this juncture, Underwood has not established that he sufficiently complied with the IADA request and service requirements, such that we can determine that the Respondent abused its discretion by failing to act on the request or the motion to dismiss, notwithstanding the lengthy time that has passed since they were filed. We cannot issue the requested Writ of Mandamus on this record.

Accordingly, Underwood's Petition for Writ of Mandamus is denied.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Petition denied
Opinion delivered and filed November 8, 2017
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