COURT OF APPEALS
DECISION
DATED AND FILED

September 28, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Nos. 00-1055
00-1057
00-1059

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EUGENE E. VOLK,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Portage County: JOHN V. FINN, Judge. *Affirmed.*

¶1 VERGERONT, J.[1] Eugene Volk appeals the judgments of conviction for operating under the influence, fourth offense, and operating under

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f).

the influence, fifth offense, in violation of WIS. STAT. § 346.63(1)(a) (1993-94),[2] and possession of tetrahydrocannabinols (THC) in violation of WIS. STAT. § 161.41(3r).[3] He contends the trial court erred when it denied his motion to dismiss the charges on the ground that the State did not comply with the time limit for bringing him to trial established in WIS. STAT. § 976.05, the Interstate Agreement on Detainers (IAD). We agree with the trial court that the IAD does not apply because no detainer was lodged against Volk and the warrant issued for Volk's arrest does not constitute a detainer within the meaning of the IAD. We therefore affirm.

BACKGROUND

¶2 In late 1994, charges in a number of criminal complaints were filed against Volk in Portage County, Wisconsin. Because Volk did not appear for scheduled proceedings, a bench warrant was issued for his arrest.[4] On June 30, 1997, Volk filed a "Motion for Request for Final Disposition Agreement on Detainers" in Portage County. The motion asked for a final disposition on all indictments, informations, and complaints and stated that he was currently serving a one-year sentence in Arizona followed by seven years of probation.

¶3 Counsel was appointed in Wisconsin, and on December 8, 1997, he filed on Volk's behalf a motion to dismiss the complaints on the ground that WIS.

[2] All references to the Wisconsin Statutes are to the 1993-94 version unless otherwise noted.

[3] The judgments of conviction were entered in three separate cases, which have been consolidated on appeal.

[4] It appears from the record that more than one bench warrant was issued, but Volk refers only to one, and the precise number does not affect this opinion.

STAT. § 976.05(3) requires Volk to be brought to trial 180 days from the June 30, 1997 request. That motion was voluntarily withdrawn. Volk was brought back to the State of Wisconsin on a governor's warrant in February 1998. Once back in Wisconsin, Volk renewed the motion to dismiss and also filed his affidavit. Volk averred that he made a number of requests to the Maricopa County (Arizona) Sheriff's Department for documentation to comply with the IAD, copies of which were attached to his affidavit; these requests were ignored or returned without the requested documentation; and these actions by the Maricopa County Sheriff's Department prevented him from complying with the IAD.

¶4 At the hearing on the motion to dismiss, Volk's counsel argued that although Volk's June 30, 1997 request did not meet all the technical requirements of the IAD, it did substantially comply with the IAD and Volk's failure to meet the technical requirements was caused by intentional or negligent sabotage of the government officials having control over him. The prosecutor represented to the court that no detainer had been lodged against Volk prior to the June 30, 1997 request, and that on November 17, 1997, he was released from jail on probation in Arizona. Volk's counsel did not dispute those representations but contended that the December 1994 warrant for his arrest satisfied the detainer requirement.

¶5 The trial court disagreed and denied the motion to dismiss. The court concluded that the IAD applied only if a detainer is filed with the institution in which the defendant is incarcerated. The court explained that the purpose of the IAD was to avoid the adverse consequences to an incarcerated defendant of a detainer filed against him by another state because of outstanding charges against him in that other state; the IAD gave the defendant in such a situation the opportunity to request the state that filed the detainer to act within 180 days. The

court also concluded that, even if a detainer had been filed, the June 30, 1997 request did not comply with the IAD because Volk did not serve it on the district attorney's office and because it was not forwarded by the custodial officials with the information the statute required concerning Volk's incarceration in Arizona. The court reviewed each of the requests for information attached to Volk's affidavit and determined that none asked the custodial officials to send his request with the required information or asked for the required information.

¶6 After the court denied the motion, Volk entered into a plea agreement pursuant to which he pleaded no contest to the three charges resulting in the judgments of conviction; the other charges were dismissed and read in for purposes of sentencing.

DISCUSSION

¶7 Volk challenges the trial court's order denying his motion to dismiss on two grounds: he contends the court erred in concluding that the warrant for his arrest was not a detainer within the meaning of the IAD, and erred in deciding he had not substantially complied with WIS. STAT. § 976.05(3)(a) and (d). We address only the first ground because it is dispositive.

¶8 WISCONSIN STAT. § 976.05(3)(a) provides:

> (3) ARTICLE III. (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, the prisoner shall be brought to trial within 180 days after the prisoner has 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 or her imprisonment and his or her

> request for a final disposition to be made of the indictment, information or complaint, but for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility or date of release to extended supervision of the prisoner and any decisions of the department relating to the prisoner.

¶9 When we are asked to apply the language of a statute to undisputed facts, our review is de novo. *See* ***State v. Eesley***, 225 Wis. 2d 248, 254, 591 N.W.2d 846 (1999), *cert. denied*. We look first to the statutory language, and, if it does not set forth the legislative intent, we may look to the history, scope, context, subject matter, and object of the statute. *See* ***id.*** at 254.

¶10 In ***Eesley***, the court addressed the question whether a writ of *habeas corpus ad prosequendum* constituted a "detainer" within the meaning of WIS. STAT. § 976.05 and concluded it did not. Therefore, the court held, the IAD and its protections were never triggered. ***Id.*** at 267. Applying the analysis of ***Eesley*** to the bench warrant in this case, we conclude it is not a detainer within the meaning of § 976.05(3).

¶11 The court in ***Eesley*** first observed that "detainer" was not defined in the statute and it therefore looked to the legislative history of the federal legislation on which WIS. STAT. § 976.05 was based. That showed, the court said, that detainer was intended to be defined as "notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." ***Id.*** at 258. The court then

discussed a number of differences between a detainer and a writ of *habeas corpus ad prosequendum*: (1) a detainer is filed by the prosecutor or law enforcement personnel whereas the writ may only be issued by a court; (2) the writ requires that the prisoner be immediately brought before the court, whereas a detainer merely puts the officials of the institution in which the prisoner is confined on notice that the prisoner is wanted in another jurisdiction for trial upon release from the current confinement; (3) a detainer is not enough to effectuate a transfer of the prisoner, whereas the writ is; and (4) the writ is executed immediately, whereas a detainer may remain lodged indefinitely against a prisoner. *See* ***id.*** at 258-59.

¶12 The court in ***Eesley*** next considered the purposes of the IAD, as set forth in WIS. STAT. § 976.05(1):

> The first is to protect prisoners by 'encourag[ing] the expeditious and orderly disposition of such [outstanding] charges [against a prisoner] and determination of the proper status of any and all detainers based on untried indictments, informations or complaints.' The second purpose is to provide 'cooperative procedures' to effectuate a more uniform and efficient system of interstate rendition.

State v. Eesley, 225 Wis. 2d at 261 (citations omitted). The court also considered the purpose of the IAD as expressed in federal case law and legislative materials. The purpose is to address problems that arose due to the specific characteristics of detainers lodged against prisoners while confined in another jurisdiction: the custodial officials' knowledge of the detainer might have an adverse effect indefinitely on the prisoner's status, conditions of confinement, and chances for parole, but the prisoner had no means to resolve the charges underlying the detainer. *See* ***id.*** at 260. The court decided that the problems the IAD was intended to address did not arise from a writ of *habeas corpus ad prosequendum*

because it was executed immediately. *See* ***id.*** at. 261. The court also considered that this type of writ had a long history in Wisconsin of which the legislature was presumably aware, and the use of the word "detainer" therefore showed that the legislature did not intend to include this writ. *See* ***id.*** at 262.

¶13 Like the writ in ***Eesley***, the warrant for Volk's arrest, issued after his failure to appear in court, is different from a detainer in ways relevant to the purposes of the IAD. This warrant may be issued only by the court, and it provides a means to bring the defendant brought before the court "without unreasonable delay." WIS. STAT. § 968.09(1). However, a warrant for arrest differs from both a detainer and a writ for *habeas corpus ad prosequendum* in that it is directed only to law enforcement officers in the State of Wisconsin and may be served only within the state. WIS. STAT. § 968.04(4). These characteristics of a warrant mean that it does not give rise to the problem the IAD was intended to address—it is not served on the institution in another jurisdiction in which the prisoner is incarcerated, and does not indefinitely affect the prisoner's status there. We find no support either in the record or the law for Volk's assertion that the bench warrant "held" Volk as effectively as would a detainer. The record does not show that the institution in Arizona where he was confined knew of the warrant, and the fact that he was released on probation shows that it did not hold him in confinement because of the warrant or the underlying charges.

¶14 Finally, as with the writ in ***Eesley***, the statutory authority for arrest warrants has a long history. *See, e.g.*, WIS. STAT. ch. 124 (1849). Had the legislature intended that a warrant trigger the protections of the IAD in the same way that a detainer does, it would no doubt have said so.

¶15 We do not find persuasive Volk's argument that we should construe the term "detainer" in WIS. STAT. § 976.05(3) to include a warrant for arrest because otherwise the State may "skirt" the time limitations of the IAD as it did in this case, according to Volk. Volk chose not to appear at scheduled proceedings in late 1994. The record indicates that the State did not know where he was until he filed the June 30, 1997 request. The record does not disclose why the State did not file a detainer at that time, but, since it did not, the adverse consequences of a detainer that the IAD was intended to eliminate did not arise.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.