COURT OF APPEALS
DECISION
DATED AND FILED

January 4, 2012

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2011AP1107-CR **Cir. Ct. No. 2007CF10**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEROME MARK PANICK, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Florence County: LEON D. STENZ, Judge. *Affirmed.*

¶1 CANE, THOMAS, Reserve Judge.[1] Jerome Panick, Jr., appeals a judgment of conviction for misdemeanor battery and criminal damage to property,

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

and an order denying postconviction relief. He asserts his conviction should be vacated and dismissed with prejudice because the State failed to comply with the Interstate Agreement on Detainers (IAD). We affirm.

BACKGROUND

¶2 On May 6, 2007, while in Florence County, Panick punched his then-girlfriend and pushed her. Panick also punched out one of her van windows. Later that night, Panick, who was free on bond in a case pending in Michigan, was arrested in Michigan.

¶3 On May 10, the State charged Panick with substantial battery, criminal damage to property, and disorderly conduct for the May 6 incident. The court issued an arrest warrant. Presumably, Panick remained in Michigan and was subsequently sentenced to prison there because on July 25, the Florence County Sheriff's Department notified the Michigan Department of Corrections that Panick was subject to an arrest warrant for a pending felony charge in Wisconsin.

¶4 On July 26, Jeanne Pivoris, an employee of the Florence County district attorney's office, informed the Michigan DOC that the district attorney did not wish to extradite Panick. On August 2, the Michigan DOC informed Panick that Florence County had "revoked" its detainer for the untried charge of substantial battery. The memo also provided, "[T]hey are unwilling to extradite for this charge. This does not mean the warrant will be revoked. Should you return to the State of Wisconsin, the warrant may result in your arrest."

¶5 On March 19, 2008, Panick wrote to Pivoris:

> My name is Jerome Panick[,] Jr[.], and I am currently incarcerated at the Florence Crane Correctional Facility in Coldwater[,] Michigan.

> I am writing to you about an outstanding warr[a]nt there for assault. I am writing to see how we can resolve this matter by mail because I do not plan on getting out of prison this year, and when I do get out I would like to have all my legal matters out of the way. And I am hoping we could work together to resolve this. At this time I am not pleading guilty or not guilty. I would like to know how you stand on resolving this matter.
>
> Please contact me by mail at the below address.
>
> Sincerely,
>
> [Jerome Panick Jr. Signature]
>
> Jerome Panick #211126
> Florence Crane Corr. Facility
> 38 Fourth St.
> Coldwater[,] Michigan 49036

The letter was written on Michigan Department of Corrections prisoner stationery.

¶6 Panick was released from prison on May 5, 2009. On April 28, 2010, Panick was arrested in Minnesota on the outstanding Florence County arrest warrant, and he waived extradition.

¶7 Back in Wisconsin, Panick moved to dismiss the underlying charges, asserting, in part, the State had violated the IAD because it had failed to bring him to trial within 180 days after he requested final disposition. The court denied his motion, reasoning that Panick's 2008 letter to the district attorney's office failed to meet all the technical requirements of the IAD; consequently, Panick failed to trigger the 180-day period for bringing a prisoner to trial.

¶8 Panick subsequently pled no contest to an amended charge of misdemeanor battery and criminal damage to property,[2] and the court found him

[2] The disorderly conduct charge was dismissed and read in.

guilty. Panick filed a postconviction motion, asserting, in part, that even though his 2008 letter to the district attorney's office did not meet all the technical requirements of the IAD, the court should nevertheless determine his letter "substantially complied" with the requirements so as to trigger the 180-day time period for bringing a prisoner to trial. The court denied Panick's motion.

DISCUSSION

¶9 "The IAD is a congressionally approved interstate compact that establishes procedures for the transfer of a prisoner in one jurisdiction to the temporary custody of another." ***State v. Tarrant***, 2009 WI App 121, ¶8, 321 Wis. 2d 69, 772 N.W.2d 750. In Wisconsin, it is codified under WIS. STAT. § 976.05.

¶10 WISCONSIN STAT. § 976.05(3)(a) provides that when a prisoner is imprisoned in one state and there is a pending charge against the prisoner in another state:

> 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 … 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.

(Emphasis added.) WISCONSIN STAT. § 976.05(3)(b) provides:

> The written notice and request for final disposition referred to in par. (a) shall be given or sent by the prisoner to the department … 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.

Once the court and the state have received notice and a request for final disposition, the prisoner must be brought to trial within 180 days or the court "shall enter an order dismissing [the case] with prejudice …." *See* WIS. STAT. § 976.05(5)(c).

¶11 On appeal, Panick renews his argument that his 2008 letter "substantially complied" with the technical requirements of the IAD and triggered the 180-day time limitation. He asserts his "failure to meet all the technical requirements of the IAD was … due to how [Wisconsin and Michigan] … handled the detainer," and, as a result, we should use the "substantial compliance" doctrine to conclude his 2008 letter to the State substantially complied with the IAD requirements and triggered the 180-day time clock.

¶12 In ***State v. Blackburn***, 214 Wis. 2d 372, 380-82, 571 N.W.2d 695 (Ct. App. 1997), we observed the "substantial compliance" doctrine has been used by other jurisdictions "where the defendant's failure to meet the technical requirements of the IAD was due to 'intentional or negligent sabotage by government officials.'" (Citation omitted.) In ***Blackburn***, however, we did not determine whether Blackburn's letter substantially complied with the IAD. ***Id.*** at 382. Instead, we concluded the officials had complied with the IAD and, as such, Blackburn would be held to the technical requirements of the act. ***Id.***

¶13 The State does not assert that we should hold Panick to the IAD's technical requirements. Rather, it argues Panick's 2008 letter did not substantially comply with IAD. Specifically, the State contends Panick's letter was only a request for a plea bargain—not a final disposition, and that his letter was not accompanied by a certificate from the warden or sent by certified mail. The State also asserts Panick failed to send anything to the court to notify it of his alleged request.

¶14 Panick argues his letter substantially complied with the IAD's technical requirements. He argues his shortcomings in failing to send the letter by certified mail, to include a certificate from the warden, and to send a separate letter to the circuit court should, "in fairness, be deemed attributed to the legally erroneous stances taken by the Michigan DOC and the Florence County District Attorney's Office."

¶15 In support, Panick cites two cases for the proposition that a prisoner should not lose out on the IAD benefits simply because government officials have failed to fulfill their duties under the agreement. *See* ***United States v. Reed***, 910 F.2d 621 (9th Cir. 1990); ***United States v. Smith***, 696 F. Supp. 1381 (D. Or. 1988). While these cases suggest that the substantial compliance doctrine may be used to determine that a prisoner, who has failed to send some sort of notice to *both* the prosecutor and the court, has substantially complied with the IAD and triggered the 180-day time limitation, this premise was subsequently rejected by the United States Supreme Court in ***Fex v. Michigan***, 507 U.S. 43, 49-50, 52 (1993).

¶16 In ***Fex***, the Court, in interpreting the language of the IAD, held that the 180-day clock "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." ***Id.*** at 52 (emphasis added). The Court determined that, even if negligence or malice on the part of the prison authorities prevents the court or state from receiving a prisoner's notice and a request for final disposition, the IAD clock nevertheless does not start running until the notice is actually received. ***Id.*** at 49-50, 52. The Court noted that any "'fairness' and 'higher purpose' arguments are … more appropriately addressed to the legislatures of the contracting States, which adopted the IAD's text." ***Id.*** at 52.

¶17 Here, irrespective of whether Panick's letter to the State substantially complied with the IAD's requirements, he failed to also send notice to the court. Because ***Fex*** requires that both the court and the prosecutor receive actual notice of a request for final disposition, we cannot construe his 2008 letter to the State as also putting the court on notice. *See* ***id.***; *see also* ***United States v. Washington***, 596 F.3d 777, 781 (10th Cir. 2010) (***Fex*** requires actual delivery of a request to both the prosecutor and the court); ***United States v. Brewington***, 512 F.3d 995 (7th Cir. 2008) (notice sent only to the prosecutor was insufficient to trigger the IAD's 180-day time limitation).

By the Court.—Judgment and order affirmed.

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