STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0567

State of Minnesota,
Respondent,

vs.

Yatau Her,
Appellant.

Filed May 5, 2009
Affirmed in part and reversed in part
Halbrooks, Judge

Anoka County District Court
File No. 02-K6-05-007330

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Robert M.A. Johnson, Anoka County Attorney, Marcy S. Crain, Assistant County Attorney, Anoka County Government Center, 2100 Third Avenue, Suite 720, Anoka, MN 55303 (for respondent)

Melissa Sheridan, Assistant State Public Defender, 1380 Corporate Center Curve, Suite 320, Eagan, MN 55121 (for appellant)

Considered and decided by Ross, Presiding Judge; Halbrooks, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant argues the district court erred in (1) failing to bring him to trial within the 180-day deadline under the Interstate Agreement on Detainers (IAD) and (2) ordering him to pay restitution. Because we conclude that appellant waived the IAD deadline, we affirm in part. But because appellant's conduct did not directly cause the losses underlying the restitution award, we reverse that aspect of the district court's order.

FACTS

Appellant Yatau Her, a member of the Menace of Destruction (MOD) gang, was involved in a February 2005 Columbia Heights pool-hall shooting. Appellant drove his own car to the pool hall, transporting two MOD members as passengers; other gang members arrived in a second car. An altercation ensued between the MOD group and other pool-hall patrons. When the fight broke out, appellant ran outside. At least one MOD member fired gun shots at the other group. Two people were killed, and four others were wounded.

As the MOD members left the pool hall after the shooting, appellant's original passengers returned to his car, and he drove off. Appellant later noticed that one of his passengers had a gun that had been discharged and that some of the ammunition was missing.

In July 2005, an Anoka County grand jury indicted appellant on two counts of aiding and abetting first-degree premeditated murder, two counts of aiding and abetting first-degree premeditated murder for the benefit of a gang, four counts of aiding and

abetting attempted first-degree premeditated murder, and four counts of aiding and abetting attempted first-degree premeditated murder for the benefit of a gang. In December 2006, the Anoka County Sheriff requested that a hold be placed on appellant, who was incarcerated in Wisconsin for attempted first-degree intentional homicide. Appellant requested final disposition of the Minnesota charges against him in accordance with the IAD. The Anoka County Attorney's Office received the request on January 8, 2007.

At a hearing on March 6, 2007, William Ward, the chief public defender for the judicial district encompassing Anoka County, represented appellant. Ward informed the district court that he was having difficulties finding counsel to be appointed for appellant, in part because of the case's complexity and because of conflict-of-interest issues raised by the number of codefendants involved in the pool-hall shooting. Ten days later, Ward represented appellant at another hearing. Ward stated that he had found a suitably skilled trial attorney to represent appellant, but the attorney could not try the case before late August 2007. But Ward noted that the principal difficulty with that trial schedule was that, pursuant to the IAD, appellant's trial needed to begin by July 8. Ward and the district court explained to appellant the advantages of having an experienced, respected defense attorney, despite having to wait for trial. Appellant agreed to waive the 180-day deadline. At a June 25, 2007 meeting in chambers, the state and appellant's new attorney agreed to a jury trial date of September 24; appellant was not present at the chambers meeting.

On August 21, 2007, the state moved for a continuance of trial based on a scheduling conflict between appellant's trial and that of a codefendant, whose trial was scheduled to start October 1. Appellant objected to the continuance. His attorney said that it was his impression his client had waived the 180-day deadline before he was appointed. But appellant was adamant that the deadline still applied. The district court stated that appellant had waived the deadline: "You may have been confused about the purpose for the waiver but it clearly was waived."

In November, appellant moved the district court to dismiss all the charges against him on the ground that he had not been brought to trial within the 180-day IAD period. At appellant's plea hearing, the district court denied the motion. Contrary to its earlier statement regarding waiver, the district court stated that appellant had not waived the deadline but that the district court had found good cause for the delay based on "the inability to get you a lawyer on board, and to get that lawyer prepared in time, your lawyer's schedule, this court's schedule, [and] the [codefendant's] trial that lasted 8 weeks starting October 1st."

Appellant pleaded guilty to an amended charge of accomplice after the fact to first-degree murder for the benefit of a gang. The district court sentenced appellant to the agreed-on incarceration of 192 months. The district court later ordered appellant, jointly and severally with six codefendants, to pay a total of $24,428.65 in restitution for the victims' medical expenses, funeral expenses, and lost wages. This appeal follows.

D E C I S I O N

I.

Appellant first argues that the district court should have dismissed the charges against him because he was not brought to trial within the 180-day IAD period. We review construction of the IAD de novo. *State v. Burks*, 631 N.W.2d 411, 412 (Minn. App. 2001). The IAD is an interstate, congressionally sanctioned compact among almost all the states, the District of Columbia, and the federal government and is subject to federal construction. *New York v. Hill*, 528 U.S. 110, 111, 120 S. Ct. 659, 662 (2000); *State v. Wells*, 638 N.W.2d 456, 459 (Minn. App. 2002), *review denied* (Minn. Mar. 19, 2002); *cf. Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002) (stating that uniform laws are to be interpreted to achieve uniformity among the adopting states).

A prisoner who properly requests "a final disposition to be made of the indictment" against him "shall be brought to trial within 180 days" of delivering his request. Minn. Stat. § 629.294, art. III(a) (2006). But "for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance." *Id.* If trial does not take place as required, "the court shall enter an order dismissing the [indictment] with prejudice." *Id.*, art. III(d) (2006).

Appellant argues that there was not good cause for the delay in bringing him to trial. We decline to reach the merits of appellant's argument, because we conclude that he waived the alleged defect by pleading guilty.

When a criminal defendant, with benefit of counsel, enters a guilty plea, the defendant waives all nonjurisdictional defects arising prior to the plea. *State v. Johnson*, 422 N.W.2d 14, 16 (Minn. App. 1988), *review denied* (Minn. May 16, 1988). Our courts have not addressed whether defects claimed under the IAD are jurisdictional. Appellant cites *State v. Miller*, 525 N.W.2d 576 (Minn. App. 1994), for the proposition that IAD defects are jurisdictional and therefore not waived upon entry of a guilty plea.

But the *Miller* court addressed the IAD's companion statute governing intrastate detainers, the Uniform Mandatory Disposition of Detainers Act (UMDDA). 525 N.W.2d at 579. And its decision relied on two bases: (1) the UMDDA's "language reasonably implies that the defendant's right to speedy disposition of untried charges is jurisdictional" and (2) the defendant "consistently asserted that he was not waiving his right to appeal the detainer issue." *Id.* Neither predicate is present here. The IAD does not contain statutory language similar to the UMDDA language cited in *Miller*. And appellant did not assert that he was preserving his right to appeal the IAD issue. He told the district court specifically that he understood that pleading guilty would make it "very difficult" to appeal or withdraw the plea. Even though his IAD-based motion to dismiss was heard at his plea hearing, appellant did not seek to preserve the issue for appeal. We therefore decline to extend *Miller*'s reasoning under the UMDDA to the IAD.

Further, the majority of jurisdictions that have considered the issue have held that a prisoner's rights under the IAD are nonjurisdictional and can be waived by the entry of a guilty plea. *E.g.*, *Baxter v. United States*, 966 F.2d 387, 389 (8th Cir. 1992); *United States v. Fulford*, 825 F.2d 3, 10 (3d Cir. 1987); *Kowalak v. United States*, 645 F.2d 534,

536–37 (6th Cir. 1981); *United States v. Paige*, 332 F. Supp. 2d 467, 471–72 (D.R.I. 2004); *Gray v. Benson*, 458 F. Supp. 1209, 1212 (D. Kan. 1978), *aff'd*, 608 F.2d 825 (10th Cir. 1979); *Williams v. Maryland*, 445 F. Supp. 1216, 1222 (D. Md. 1978); *Strawderman v. United States*, 436 F. Supp. 503, 504 (E.D. Va. 1977); *State v. Gourdin*, 751 P.2d 997, 998 (Ariz. Ct. App. 1988); *People v. Carroll*, 939 P.2d 452, 454 (Colo. Ct. App. 1996); *Moore v. United States*, 724 A.2d 1198, 1199 (D.C. 1999); *People v. Wanty*, 471 N.W.2d 922, 923 (Mich. Ct. App. 1991); *Rivera v. State*, 106 S.W.3d 635, 639–40 (Mo. Ct. App. 2003); *State v. Ternaku*, 383 A.2d 437, 439 (N.J. Super. Ct. App. Div. 1978); *People v. Cusick*, 489 N.Y.S.2d 96, 97 (N.Y. App. Div. 1985); *State v. Tucker*, 656 S.E.2d 403, 406 (S.C. Ct. App. 2008), *cert. granted* (S.C. Nov. 20, 2008); *State v. Penman*, 964 P.2d 1157, 1164 (Utah Ct. App. 1998); *Pethel v. McBride*, 638 S.E.2d 727, 744 (W. Va. 2006). *But see People v. Brooks*, 189 Cal. App. 3d 866, 870 (Cal. Ct. App. 1987) ("As a general rule a guilty plea does not constitute a waiver of a violation of the IAD properly asserted before the plea is entered.").

Our obligation to construe the IAD in accordance with federal decisions and to construe uniform laws in accordance with their construction in other states leads us to the same conclusion: alleged violations of the IAD are waived when a prisoner pleads guilty. Appellant's guilty plea therefore operated to waive his claimed defect.

II.

Appellant also argues the district court's order that he pay restitution was error because he did not directly cause the victims' losses. We review a district court's award of restitution for an abuse of discretion. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn.

1999). A district court abuses its discretion when it awards restitution for losses that were not directly caused by the defendant's actions. *State v. Latimer*, 604 N.W.2d 103, 105–06 (Minn. App. 1999). In *Latimer*, the defendant admitted to helping others dispose of weapons and other evidence used in a murder. *Id.* at 104. Because the defendant was not present at and took no part in the murder itself, this court concluded that her crime was committed when the murder itself was complete. *Id.* at 105.

Although appellant drove other gang members to the pool hall, nothing in the record indicates that he knew that his passengers were carrying weapons or intended to kill anyone. The record only reflects that he became aware that one of his passengers had a gun after the shootings, when the murders were complete and when appellant's crime—assisting others in evading arrest—had commenced. Because the record before us indicates that appellant did not directly cause any of the underlying expenses, we reverse the restitution order as it applies to him.

Affirmed in part and reversed in part.