STATE OF MINNESOTA
IN COURT OF APPEALS
A10-844

State of Minnesota,
Respondent,

vs.

Earnest McMullen,
Appellant.

Filed March 22, 2011
Affirmed
Stauber, Judge

Olmsted County District Court
File No. 55CR068931

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, Rochester, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from his conviction of third-degree controlled substance crime following a stipulated-facts trial, appellant argues that he substantially complied with the Interstate Agreement on Detainers by providing written notice of his place of

imprisonment and request for final disposition of his Minnesota charges to both the Olmsted County Attorney and the district court. He contends that he was not brought to trial within 180 days of his request as required by the Interstate Agreement on Detainers, and therefore the district court erred by denying his motion to dismiss the complaint. We affirm.

FACTS

In October 2006, appellant Earnest McMullen was charged in Olmsted County with conspiracy to commit controlled substance crime in the second degree and controlled substance crime in the third degree. Appellant failed to appear for his November 7, 2007 trial date, and a warrant was issued for his arrest. It was later discovered that appellant had left the state and was incarcerated in Alabama beginning in December 2007 for unrelated offenses. The Olmsted County Sheriff's Office then lodged a detainer against appellant with the Alabama correctional facility.[1]

Appellant wrote to the district court in January 2009, stating that he was incarcerated in the Bibb County Correctional Facility in Alabama and requesting the court to forward his case file. In February 2009, appellant sent a motion for discovery and a motion for court-appointed counsel to the district court and the Olmsted County Attorney. Appointed counsel advised appellant to file a request for final disposition of the charges in order to force the Olmsted County Attorney to bring him to Minnesota for

[1] A detainer is "a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency, or that the agency be advised when the prisoner's release is imminent." *Fex v. Michigan*, 507 U.S. 43, 44, 113 S. Ct. 1085, 1087 (1993).

trial within 180 days or the charges would be dismissed. On March 27, 2009, appellant completed and signed an Interstate Agreement on Detainers (IAD) form that provided notice of his place of imprisonment and formally requested disposition of his outstanding charges in Minnesota. This form was date-stamped as received by the Bibb County Correctional Facility on March 31, 2009. However, the form was not sent by appellant or the correctional authorities to either the district court or the Olmsted County Attorney.

Appellant completed his sentence in Alabama and was returned to Minnesota in September 2009. On December 3, appellant moved to dismiss the charges based on a violation of IAD, alleging that he was not brought to trial within 180 days of his request for a final disposition of the charges. At the motion hearing, both the district court and the state indicated that they did not receive the IAD paperwork completed by appellant on March 27.

The district court denied appellant's motion to dismiss the charges, finding that appellant "failed to deliver to the prosecuting officer and this court . . . written notice of the place of his imprisonment and his request for final disposition to be made of the complaint." Appellant then agreed to waive his right to a jury trial and submit the case to the court on stipulated facts in order to obtain appellate review of the pretrial ruling. Based on the stipulated facts, the district court found appellant guilty of third-degree controlled substance crime and sentenced him to 51 months in prison. This appeal followed. The state has not filed a brief and this appeal proceeds on the merits under Minn. R. Civ. App. P. 142.03.

D E C I S I O N

We note at the outset that although this case was purportedly submitted to the district court on stipulated facts, appellant did not maintain a plea of not guilty as required by Minn. R. Crim. P. 26.01, subd. 4. The court told appellant: "[b]asically, in real English, to keep it simple, Mr. McMullen, you're pleading guilty to the controlled substance crime in the third degree, but you want to preserve the issue of your detainer request." Despite this mischaracterization, the record is clear that the prosecutor, appellant's attorney, and the district court, all intended the procedure to be a stipulated-facts trial, pursuant to subdivision 4. And although the district court mischaracterized the procedure, the court later issued findings clarifying that the case was submitted to the court on stipulated facts and determining that there was sufficient evidence to find appellant guilty. Accordingly, we conclude that appellant preserved the right to appellate review of the district court's pretrial ruling.

Appellant argues that the district court erred by denying his motion to dismiss because he properly complied with the IAD by sending written notice of his place of imprisonment and a request for final disposition of the charges to both the district court and the Olmsted County Attorney, but was not tried within 180 days as required by the statute. The construction of the IAD as codified in the Minnesota Statutes is a question of law subject to de novo review. *State v. Burks*, 631 N.W.2d 411, 412 (Minn. App. 2001).

The IAD is a compact among 48 states, the United States, and the District of Columbia to establish procedures for resolving one state's outstanding criminal charges

against a prisoner of another state. *State v. Wells*, 638 N.W.2d 456, 459 (Minn. App. 2002), *review denied* (Minn. Mar. 19, 2002). Minnesota and Alabama are both parties to the compact and have codified it in their statutes. *See* Minn. Stat. § 629.294 (2010); Ala. Code 1975 § 15-9-81. The purpose of the agreement is to "encourage the expeditious and orderly disposition" of outstanding charges pending in another state so that prisoner rehabilitation programs will not be disrupted or unavailable because of the untried charges. Minn. Stat. § 629.294, art. I.

Because the IAD is a congressionally sanctioned interstate compact, federal law governs its construction and application. *Wells*, 638 N.W.2d at 459. States interpret and apply the IAD provisions, but are constrained by United States Supreme Court cases that directly address the same issues. *Id.*

Article III of the IAD provides that if a prisoner requests final disposition of out-of-states charges for which a detainer has been lodged against him, the prisoner "shall be brought to trial within *180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court* . . . written notice of the place of his imprisonment and his request for final disposition." Minn. Stat. § 629.294, art. III(a) (emphasis added). Additionally, this request "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," as well as information concerning good time earned and parole eligibility. *Id.* The statute further provides that the prisoner must give the request for final disposition to the warden or other official of the facility where he is in custody,

"who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested." *Id.*, Art. III(b). If the defendant is not brought to trial within 180 days, the out-of-state complaint must be dismissed with prejudice. *Id.*, art. V(c).

The United States Supreme Court has held that the 180-day period does not begin to run until the request for final disposition is actually received by the court and the prosecutor of the appropriate jurisdiction. *Fex*, 507 U.S. at 52, 113 S. Ct. at 1091. This holding was adopted by this court in *Burks*. 631 N.W.2d at 414. In *Burks*, the appellant signed the proper IAD paperwork and gave it to correctional authorities at the Wisconsin prison where he was incarcerated. *Id.* at 412. However, the correctional authorities failed to complete and forward the IAD request to the Hennepin County District Court and Hennepin County Attorney's Office. *Id.* This court rejected appellant's claim that the 180-day period should commence when a prisoner transmits an IAD request to prison authorities, instead holding that actual receipt is required, "even if the request gets lost in the mail and is never delivered." *Id.* at 413 (quoting *Fex*, 507 U.S. at 47–48, 113 S. Ct. at 1088–89).

Here, both the district court and the prosecutor stated on the record that they did not receive the IAD paperwork that appellant completed on March 27. The Olmsted County Register of Actions also does not show any such documents being filed. The Olmsted County prosecutor went on record stating that he did not receive any request from appellant: "[a]s an officer of the court, I'm telling the court we don't have it in our file."

Further, the form signed by appellant on March 27 only contains appellant's request for final disposition. The statute also requires a certificate from the Alabama correctional facility stating appellant's term of commitment, time already served, and time remaining to be served. *See* Minn. Stat. § 629.294, art. III(a). There are no such forms from the Alabama facility anywhere in the record. Because appellant's IAD request is stamped as received by the Alabama correctional facility on March 31, 2009, it appears that the correctional facility received appellant's request but failed to complete the IAD paperwork and forward it to the district court and prosecutor in Minnesota. Accordingly, because appellant did not provide the district court and the state with a complete and proper request under the statute, the 180-day period did not begin to run and the district court did not err by denying appellant's motion to dismiss.

Appellant also argues that he substantially complied with the IAD and therefore his motion to dismiss should have been granted. This court acknowledged in *Burks* that some jurisdictions have found the 180-day period to commence if a petition substantially complies with the requirements of the IAD. 631 N.W.2d at 413–14. However, the *Burks* court declined to adopt any substantial compliance doctrine; instead, it held that the 180-day period did not begin to run because the state did not actually receive the request. *Id.* The facts in this case are indistinguishable from those in *Burks*. The detainee in *Burks* completed an IAD request and gave it to his correctional facility authorities who failed to complete and forward the paperwork to the prosecutor and district court. *Id.* at 412. This court rejected the appellant's argument that he was in substantial compliance with the

IAD and instead adopted the *Fex* rule that only actual receipt of a detainee's request commences the 180-day period. *Id.* at 413–14.

Further, even assuming that a substantial compliance doctrine is recognized, the cases cited by appellant are not analogous. *See, e.g.*, *United States v. Dent*, 149 F.3d 180, 186-87 (3d Cir. 1998) (recognizing doctrine of substantial compliance, but holding that appellant did not substantially comply with IAD because his letter to the court did not reference IAD and did not include his term of commitment, time already served, and time remaining to be served); *Gibson v. Klevenhagen*, 777 F.2d 1056, 1058 (5th Cir. 1985) (finding that appellant complied with IAD by sending personal letter to both prosecutor and district court requesting final disposition of charges); *Schofs v. Warden, FCI, Lexington*, 509 F. Supp. 78, 81-82 (E.D. Ky. 1981) (appellant requested and was denied proper IAD forms, but sent letter to court and state's attorney requesting final disposition of charges and specifically referring to IAD). In the cited cases, the district court and the prosecutor from the appropriate jurisdiction received actual notice of the detainee's request for final disposition of the charges. Here, the district court and the Olmsted County Attorney had no actual notice.

Appellant argues that actual notice was provided because a motion for discovery made by appellant in February 2009 informed the state and the district court that he was in custody in Alabama. While this motion did provide notice of appellant's place of imprisonment, it does not mention the IAD or request final disposition of the charges. The other correspondence appellant points to, a January 27, 2009 letter to the district court, is only a request for the court to forward appellant his case file. This letter was not

sent to the prosecutor and also does not mention the IAD or request final disposition of the charges.

We conclude that appellant did not provide the district court and the state with a proper request under the statute. Although the blame for the state and district court not receiving appellant's IAD request may very well lie with the Alabama correctional facility, this fact does not entitle appellant to relief. The Supreme Court acknowledged in *Fex* that by requiring actual receipt, "a warden, through negligence or even malice," might "delay forwarding of the request and thus postpone the starting of the 180-day clock." *Fex*, 507 U.S. at 49, 113 S. Ct. at 1089. But the court noted that the result would be worse if the state was precluded from prosecuting a case "before the prosecutor even knows it has been requested." *Id.* at 50, 113 S. Ct. at 1190. Here, although appellant attempted to comply with the IAD, the record shows that the state and the district court did not receive his request. Thus, the 180-day period did not begin to run and the district court did not err by denying the motion to dismiss.

Affirmed.