P. EXTRADITION/SECURING DEFENDANT'S ATTENDANCE

P.1. Uniform Extradition (Uniform Extradition Act, Ind. Code 35-33-10-3)

TITLE: Smithey v. State
INDEX NO.: P.1.
CITE: (3rd Dist., 5-22-98), Ind. App., 694 N.E.2d 1184
SUBJECT: Extradition - fugitive from justice does not require proof of fleeing
HOLDING: In 1983, D was sentenced to term of imprisonment in Louisiana, but was sent to Illinois to complete sentence for robbery committed in Illinois. Although Louisiana issued a detainer & filed it in Illinois, D was released from incarceration in Illinois in 1987 & resided in Indiana. In 1992, Illinois Parole Board ordered D released from parole. In 1997, Indiana filed fugitive charge & warrant stemming from D's convictions in Louisiana. In challenging legality of warrant, D argued that he did not "flee" from Louisiana & as such is not "fugitive from justice," as alleged in warrant. Ct. disagreed & noted that Ind. Code 35-33-10-3(5) (a-c) specifically contemplates extradition of D who has not completed term of imprisonment. By fact that term has not been completed & no reversal of conviction has been granted, D is fugitive from justice without act of fleeing. Thus, while record in this case was sketchy as to circumstances under which D was made available to Illinois, even without assuming that D fled Louisiana, D remained fugitive from justice in Louisiana. Held, denial of writ of habeas corpus affirmed.

P. EXTRADITION/SECURING DEFENDANT'S ATTENDANCE

P.1. Uniform Extradition (Uniform Extradition Act, Ind. Code 35-33-10-3)

P.1.a. Rights/powers/duties of states

TITLE: Robertson v. State
INDEX NO.: P.1.a.
CITE: (03/05/92), Ind., 587 N.E.2d 117
SUBJECT: Extradition
HOLDING: Fact that sheriff did not file return to writ of habeas corpus, as required by Ind. Code 34-1-57-9, did not entitle D to discharge, as all parties were aware of authority for D's arrest, & return would have contained no information not already available to Ct. & D. Masden (1976), 265 Ind. 428, 355 N.E.2d 398. Following issuance of Ind. Governor's Warrant, issued because of governor of Michigan's request for extradition, D was arrested & filed petition for writ of habeas corpus. At hearing on writ, D moved for discharge because of failure of sheriff to file return. Sheriff's failure was not reversible error. Additionally, D argued that evidence was insufficient to warrant his extradition, specifically raising issues as to whether his escape in Michigan was proven & length of his Michigan sentence. Ct. found that extraditions are not criminal trials, & that only issues before Ct. are authenticity of warrant & identity of person. Guilt or innocence is not issue in asylum state, that issue is to be resolved in Michigan. Evidence was sufficient to show warrant's authenticity & identity of D. Held, Tr. Ct. affirmed.

P. EXTRADITION/SECURING DEFENDANT'S ATTENDANCE

P.1. Uniform Extradition (Uniform Extradition Act, Ind. Code 35-33-10-3)

P.1.a.1. In general

TITLE: California v. Superior Court of California
INDEX NO.: P.1.a.1.
CITE: 482 U.S. 400, 107 S. Ct. 2433, 96 L.Ed.2d 332 (1987)
SUBJECT: Powers / duties of asylum state
HOLDING: Extradition Clause provides that persons charged with crime who flee to another state shall be returned to state where charges arise upon demand of executive authority of charging state. U.S. Const., Art. 4, section 2, Cl. 2. Extradition Act provides that asylum state is bound to deliver fugitive to demanding state's agent where properly certified indictment or affidavit charging crime is lodged. 18 U.S.C. section 3182. Here, LA (demanding state) formally notified CA (asylum state) that parental kidnapping charges had been filed against Ds in LA & requested extradition. CA court took judicial notice of CA custody order granting D custody, concluded that Ds were not substantially charged with crime in LA & granted writ of habeas corpus; thus, blocking extradition. Court finds that Extradition Act leaves only 4 issues open for consideration by asylum state before fugitive is delivered up (1) whether extradition documents on their face are in order; (2) whether petitioner has been charged with crime in demanding state; (3) whether petitioner is person named in request for extradition; & (4) whether petitioner is fugitive. MI v. Doran (1978), 439 U.S. 282, 289, 99 S. Ct. 530, 58 L.Ed.2d 521. Held, courts of asylum states are permitted only to determine whether above requisites have been met. Surrender under Extradition Act is not to be interfered with by summary process of habeas corpus upon speculations as to what ought to be result of trial. Stevens, joined by Brennan, DISSENTS.

RELATED CASES: Puerto Rico v. Branstad (6/23/87), U.S., 107 S. Ct. 2802, 97 L.Ed.2d 187 (duty of asylum state to deliver fugitive upon proper demand is a ministerial function for which there is no discretion; duty may be enforced by federal court).

TITLE: Decker v. State
INDEX NO.: P.1.a.1.
CITE: (9/9/91), Ind., 577 N.E.2d 959
SUBJECT: Extradition -- challenging legality of extradition; scope of Ct.'s inquiry and State's burden
HOLDING: When governor of asylum state has granted extradition and party sought files petition for habeas corpus, Ct. of magistrate need decide only whether extradition documents are in order on their face, whether D has been charged with crime in other state, whether D is person named in request for extradition, and whether D is fugitive (present in demanding state at time of crime, then having subsequently left). Here, D filed petition for writ of habeas corpus in order to contest extradition to Texas. D claimed that State did not discharge its burden of making prima facie case as to his identity and that only evidence of his identity was his own statement from witness stand. Ct. held that State made prima facie case when it established that fingerprints taken in Texas of person wanted by that state matched fingerprints taken of detainee in Indiana. Held, approval of extradition to Texas affirmed.

TITLE: Robertson v. State
INDEX NO.: P.1.a.1.
CITE: (3/5/92), Ind., 587 N.E.2d 117
SUBJECT: Extradition -- affidavits not complying with Indiana law
HOLDING: D was arrested on governor's extradition warrant on behalf of governor of Michigan. D filed petition for writ of habeas corpus which was granted by Tr. Ct. D claimed that notary attaching jurat to supporting affidavits did not state his county of residence as required by Indiana law. Ct. held that these affidavits were issued according to law of Michigan and were not required to comply with law in Indiana. Governor of Michigan has certified papers to be in order. Held, finding of appropriate extradition affirmed.

P. EXTRADITION/SECURING DEFENDANT'S ATTENDANCE

P.1. Uniform Extradition (Uniform Extradition Act, Ind. Code 35-33-10-3)

P.1.b. Arrest/detention

TITLE: Greengrass v. State
INDEX NO.: P.1.b.
CITE: (8/31/89), Ind., 542 N.E.2d 995
SUBJECT: CR 4(C) - year runs from time of out-of-state arrest, not from completed extradition
HOLDING: D's trial & conviction 6 years after initial out-of-state arrest violated CR 4(C) guaranteeing trial within one year. Robbery & attempted murder charges were filed against D 10/7/80, based on incident which allegedly occurred 9/27/80. D was arrested on that charge in NY 11/27/80, but Ind. failed to complete extradition proceedings. D was re-arrested in NJ in 9/86, & extradited to Ind. D filed motion to dismiss based on CR 4(C), which was denied, & D was convicted of robbery. On appeal, D argues Tr. Ct. erred in denying motion to dismiss. Ind. S. Ct. reasons that D's initial arrest in NY was on IN charges. State's choice not to complete extradition caused delay with which D cannot be charged. Held, remanded with instructions to set aside D's conviction & order him discharged from custody. DeBruler & Shepard, JJ., DISSENT, arguing that one-year limitation in CR 4(C) was not intended to include time used in extradition process.

RELATED CASES: Sickels, 960 N.E.2d 205 (Ind. Ct. App 2012) (Unlike in Greengrass, State never refused to complete extradition proceedings once it learned of D's presence in Michigan, and thrice issued governor's warrants in an attempt to have D brought into Indiana); Blasko, 920 N.E.2d 790 (Ind. Ct. App. 2010) (distinguishing Greengrass, Ct. noted there was no evidence State refused to move forward on D's extradition from Florida or that State cancelled extradition order).

P. EXTRADITION/SECURING DEFENDANT'S ATTENDANCE

P.1. Uniform Extradition (Uniform Extradition Act, Ind. Code 35-33-10-3)

P.1.c. Hearing

TITLE: Daher v. State
INDEX NO.: P.1.c.
CITE: (6/11/91), Ind. App., 572 N.E.2d 1304
SUBJECT: Extradition -- hearing in accordance with Detainer Statute; procedural protections
HOLDING: Interstate Agreement on Detainers (Detainer Statute), codified as Ind. Code 35-33-10-4, relates to interstate transfer of Ds to answer to criminal charges. It applies only to Ds who have been convicted and are serving sentences in sending state. Detainer Statute provides for expeditious disposition of all outstanding charges which may affect conditions or duration of imprisonment and treatment, Webb, 437 N.E.2d 1330. Here, inmate was subject of proceeding and given hearing in accordance with Detainer Statute. Ct. held that D received all procedural protections to which he was entitled where he was informed of demand for his surrender, crime with which he was charged, his right to have attorney, and his right to have hearing. Held, denial of D's challenge to request for temporary transfer of custody affirmed.

P. EXTRADITION/SECURING DEFENDANT'S ATTENDANCE

P.1. Uniform Extradition (Uniform Extradition Act, Ind. Code 35-33-10-3)

P.1.d. Bail

TITLE: Holland v. Hargar

INDEX NO.: P.1.d.

CITE: (9/17/80), Ind., 409 N.E.2d 604

SUBJECT: Extradition -- bail

HOLDING: D appealed from denial of release in habeas corpus proceeding. D claimed that Tr. Ct. erred in setting bail at $50,000.00 denying him his right to reasonable bail guaranteed by Eighth Amendment of U.S. Constitution and Article I, of Indiana Constitution. Ct. held that amount of bail set is within discretion of Tr. Ct. Here, sum set was reasonable under circumstances to secure petitioner's appearance. Held, denial of release affirmed.

P. EXTRADITION/SECURING DEFENDANT'S ATTENDANCE

P.1. Uniform Extradition (Uniform Extradition Act, Ind. Code 35-33-10-3)

P.1.g. Waiver of extradition

TITLE: VanEvey v. State

INDEX NO.: P.1.g.

CITE: (11/6/86), Ind., 499 N.E.2d 245

SUBJECT: Waiver of extradition - juveniles

HOLDING: IC 31-6-7-3, which provides juvenile with meaningful consultation with parents before submitting to police questioning, does not apply to extradition procedures of other states. Here, D argues MI's failure to comply with IN statute was fatal in obtaining voluntary waiver of objections to extradition. Ct. finds D waived error by failing to present Ct. with documentation of extradition proceedings; however, Ct. addresses merits of D's argument that failure to comply with statute deprived him of right to remain silent. D's statements to MI authorities were never sought to be introduced at trial. D was 17 when arrested & considered an adult in MI. D does not allege MI authorities failed to comply with their own extradition procedures & cites no authority that IN statute is binding on sister state's extradition proceedings. Furthermore, extradition proceedings are not critical stage of criminal prosecution, & guilt or innocence is not in issue at in asylum state. Issues in extradition proceeding are limited to fugitivity, identity, & authenticity of paperwork. Cobb v. Gilman 391 N.E.2d 618. Ct. concludes Ind. Code 31-6-7-3 was not intended to protect juveniles in extradition proceedings. Held, no error.

P. EXTRADITION/SECURING DEFENDANT'S ATTENDANCE

P.1. Uniform Extradition (Uniform Extradition Act, Ind. Code 35-33-10-3)

P.1.i. Effect of illegal extradition

TITLE: Graham v. State
INDEX NO.: P.1.i.
CITE: (6/12/84), Ind., 464 N.E.2d 1
SUBJECT: Extradition - illegal; effect
HOLDING: Tr. Ct. did not err in refusing to suppress juvenile D's confession which D contended was product of illegal extradition. Here, D admittedly signed consent for voluntary return to IN, but argues he was never informed by judge of his rights under Ind. Code 31-6-10-1 (interstate compact on juveniles). Tr. Ct.'s jurisdiction is not affected by manner of return, even if method used was improper. Massey 371 N.E.2d 703. Even return by forcible abduction does not impair Ct.'s power to try D. Frisbie v. Collins, (1952) 342 U.S. 519, 72 S.Ct. 509. D may challenge admissibility of any evidence obtained as result of arrest/extradition. D makes no showing that confession (given in IN) was product of alleged illegal extradition. Held, no error.

HOLDING: VanEvey v. State, 499 N.E.2d 245 (see card at U.4.a).

P. EXTRADITION/SECURING DEFENDANT'S ATTENDANCE

P.2. Detainers (IAD, Ind. Code 35-33-10-4)

TITLE: Alabama v. Bozeman
INDEX NO.: P.2.
CITE: 533 U.S. 146, 121 S.Ct. 2079, 150 L.E.2d 188 (2001)
SUBJECT: Interstate Agreement on Detainers
HOLDING: The Interstate Agreement on Detainers, Article IV(e) (see Ind. Code 35-33-10-4, Article 4(e)) bars further proceedings against a defendant who is taken from imprisonment in one jurisdiction to another jurisdiction for purposes of a trial and is returned to the first jurisdiction before the trial. Bozeman was serving a federal sentence but was taken into State custody for arraignment and then returned to federal custody the next day. Held, the literal language of the IAD requires that the state charges be dismissed.

TITLE: Bowling v. State

INDEX NO.: P.2.

CITE: (5th Dist., 12-30-09), (Ind. App. 2009) 918 N.E.2d 701

SUBJECT: Interstate Agreement on Detainers (IAD) - D's failure to deliver request to Tr. Ct. and prosecutor

HOLDING: Under the IAD, a defendant must be brought to trial within 180 days after he has "caused to be delivered" to the prosecutor and the appropriate court written notice of where he is incarcerated and of his request for final disposition of charges. Ind. Code 35-33-10-4, Art. 3(a)). These procedures are not mere technicalities. State v. Greenwood, 665 N.E.2d 579 (Ind. 1996). A prisoner's delivery of IAD materials to prison officials does not constitute proper notice under the IAD. Fex v. Michigan, 507 U.S. 43, 113 S.Ct. 1085, 122 L. Ed. 2d 406 (1993). "Even if delivery of the notice is delayed due to negligence or malice on the part of prison authorities, the IAD's clock does not start running until the notice is actually received by both the prosecutor and the court." U.S. v. Brewington, 512 F.3d 995 (7th Cir. 2008).

Here, trial court did not err in denying Defendant's motion to dismiss pursuant to IAD, because there was no evidence that he delivered speedy trial request to trial court and prosecutor. Because the 180-day period would not commence until trial court and prosecutor received Bowling's IAD request, and because neither received such a request, there could not be an IAD violation because the 180-day period never commenced. Court noted there was no evidence Defendant attempted to confirm that his request had been forwarded to the clerk, trial court, and prosecutor. Held, judgment affirmed.

TITLE: Conn v. State

INDEX NO.: P.2.

CITE: (1st Dist., 07-28-05), Ind. App., 831 N.E.2d 828

SUBJECT: Interstate Agreement on Detainers (IAD) - denial of D's right to be present for continuance hearing

HOLDING: A state bringing charges against a prisoner in custody in another state begins the IAD process by filing a detainer; after a detainer is filed, the inmate may file a request for final disposition, & the inmate must be brought to trial within 180 days. New York v. Hill, 528 U.S. 110 (2000). Ind. Code 35-33-10-4 Art. III(a) provides that for good cause shown in open Ct., the prisoner or his counsel being present, the Ct. having jurisdiction of the matter may grant any necessary or reasonable continuance. The IAD requires reversal of conviction & dismissal when continuances beyond 180-day period are not conducted in presence of D or his attorney. United States v. Mauro, 436 U.S. 340, 352 (1978). Here, Tr. Ct. properly ordered an indefinite continuance when defense counsel did not appear for trial. D, pro se, maintained his request to be tried within IAD's 180-day period. When Tr. Ct. later set D's trial date, it did not inform D of this setting until a week before trial & D once again maintained his right to IAD trial deadline. Tr. Ct. did not follow through with its assurance to D that parties would reconvene once counsel could be located, which deprived D of his right to be present when reasonableness or necessity of length of his continuance was determined. Birdwell v. Skeen, 983 F.2d 1332 (5th Cir. 1993).

Ind. Code Indiana's codification of IAD does not require a D to establish prejudice for dismissal, but Ct. noted that regardless, prejudice was amply demonstrated in this case. It is possible that it was reasonable or necessary for Tr. Ct. to schedule D's trial 102 days beyond IAD's 180-day limitation, but D was denied opportunity to query Tr. Ct. as to why his trial could not be set in less than 102 days. Thus, IAD requires his convictions to be reversed. Ct. disagreed with dissenting opinion which claimed that length of an IAD continuance is not subject to good-cause & open-Ct. requirements of IAD. D's presence during setting of a continuance is an independent IAD requirement, & D's inability to learn of Tr. Ct.'s reason for length of his continuance at time of its issuance precludes an honest review of whether there was good cause to extend D's trial102 days beyond his IAD deadline. Once attorney was located, Tr. Ct. was required to expediently set a trial date in D or attorney's presence. Held, convictions reversed; Crone, J., dissenting.

TITLE: Crawford v. State
INDEX NO.: P.2.
CITE: (6-28-96), Ind., 669 N.E.2d 141 Ind. Code
SUBJECT: Arrest warrant did not trigger application of Interstate Agreement on Detainers (I.A.D.)
HOLDING: Arrest warrants received by warden of Missouri Penitentiary in 1965 were not "detainers" within meaning of I.A.D. In response to State's detainer for unrelated murder lodged against D in 1973, D requested final disposition of all untried indictments, informations or complaints against him from Indiana. D's request for final disposition only triggers I.A.D. requirement that he be brought to trial within 180 days if it is made in response to detainer lodged against prisoner on basis of "untried indictment, information or complaint." Ind. Code 35-33-10-4, art. 3(a) & (d). Ct. held that, notwithstanding Indiana sheriff's intent, 1965 arrest warrant was not "detainer" based on untried indictment or information concerning murder charged in this case. Ct. also held that lodging of 1965 arrest warrant did not constitute & was not based upon "complaint" within meaning of I.A.D. statute. Complaint must be more than affidavit upon which arrest warrant is based. Thus, D's 1973 request for final disposition did not trigger I.A.D. requirement that he be brought to trial within 180 days for murder charged in this case. Held, conviction affirmed, DeBruler, J., dissenting.

RELATED CASES: Robinson, App., 863 N.E.2d 894 (arrest warrant which was based on failure to appear was not a detainer based on an untried information that would trigger IAD).

TITLE: Daher v. State
INDEX NO.: P.2.
CITE: (1991), Ind. App., 572 N.E.2d 1304
SUBJECT: Interstate Agreement on Detainers - procedural protections
HOLDING: Inmate who was subject of proceeding under Interstate Agreement on Detainers ("IAD") received all procedural protections to which he was entitled where inmate was informed of demand for his surrender, crime with which he was charged, his right to have attorney, & his right to have hearing. IAD applies only to inmates who have been convicted & are serving sentence in prison in sending state & not to inmates who are imprisoned awaiting trial. Inmates transferred pursuant to IAD were to be afforded same procedural protections afforded to inmates extradited under Uniform Extradition Act, or any procedural protections afforded to inmates extradited under state law. Cyler v. Adams, 449 U.S. 433 (1981); see Ramirez, 455 N.E.2d 609 (Ind. 1983). Here, D contends that because State did not comply with verification & other substantive provisions of Extradition Statute, State's request for extradition should have been denied. However, Ct. holds that Cyler does not require states seeking inmates to "extradite" individuals sought under IAD. Thus, D received procedural protection to which he was entitle under Detainer Statute.

RELATED CASES: Thompson, App., 687 N.E.2d 225 (IAD does not apply to probation violations, even where violation is based on commission of crime); State ex.rel. Kindred, 525 N.E.2d 339 (IAD does not apply to D in federal custody awaiting probation violation hearing); Dorsey, 490 N.E.2d 260 (IAD does not apply to D held for trial & serving sentence while in jail in Michigan); Carchman v. Nash, 473 U.S. 716 (IAD does not apply to probation violations).

TITLE: Dotson v. State
INDEX NO.: P.2.
CITE: (5/24/84), Ind., 463 N.E.2d 266
SUBJECT: Detainers - habitual later added to charge
HOLDING: Interstate Agreement on Detainers was not violated where D consented to transfer on burglary charge to which habitual later was added. Here, D contends he would have contested transfer had he known of habitual count, hence his due process right to a pre-transfer hearing was violated. D must be informed of "untried indictment, information, or complaint" against him/her, but inasmuch as habitual offender is not a crime, D need not be informed of habitual count. State v. Tyson, (TN Crim.App. 1980) 603 S.W.2d 748. D's consent to transfer was valid. Held, no error.

TITLE: Fex v. Michigan
INDEX NO.: P.2.
CITE: 507 U.S. 43,113 S.Ct. 1085, 122 L.Ed.2d 406 (1993)
SUBJECT: Interstate Agreement on Detainers (IAD) - time limit; commencement
HOLDING: IAD's 180-day time limit for bringing prisoner to trial after he has requested disposition of outstanding charges does not begin to run until request actually reaches proper authorities in jurisdiction where charges are pending. IAD provides that prisoner who is subject to detainer lodged by another state must be brought to trial within 180 days "after he shall have caused to be delivered" request for final disposition of charges underlying detainer. Here, D gave request to prison officials in Indiana prison where he was incarcerated, but they did not mail it for 2 weeks and Michigan officials did not receive it for another 4 days. D's trial date fell outside 180 days from time he gave request to Indiana officials, but within 180 days from time Michigan officials received it. Majority writes that language of IAD can be interpreted to support either starting date, but that since delivery is more identifiable point in time than causation, delivery is more likely intended starting point. Also, IAD requires documentary evidence of date of receipt of request, but not date of delivery by prisoner. D argued that "fairness" requires adoption of mailbox rule, because prisoners are powerless to do anything more to effectuate delivery than turn over request to their custodian. Majority notes that this argument would give effect to request that was never delivered at all, precluding prosecution, and this result cannot be supported by text of IAD. Any fairness issues D has raised, according to majority, are better addressed by legislatures. Blackmun and Stevens, JJ., DISSENT, arguing that key word in disputed statutory phrase is "he," meaning prisoner.

TITLE: Gilbert v. State
INDEX NO.: P.2.
CITE: (2/22/2013), 982 N.E.2d 1087 (Ind. Ct. App 2013)
SUBJECT: Denial of motion to dismiss did not violate IAD's anti-shuffling provision
HOLDING: In question of first impression, in denying D's motion to dismiss, the trial court did not violate the “anti-shuffling” provision of the Interstate Agreement on Detainers when D was returned to the state of origin (Kentucky) after pleading guilty to Indiana charges but before the court entered judgment and sentenced D. Under the ant-shuffling provision, "if trial is not had on any . . . information . . . prior to the prisoner being returned to the original place of imprisonment . . . such information shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice." Ind. Code 35-33-10-4, Art. IV(e). However, many jurisdictions have ruled that "the term 'trial' . . . does not encompass sentencing. If it did, then the anti-shuffling provision . . . would have addressed . . . unsentenced convictions as it does 'untried indictments, informations, or complaints'." See, e.g., Painter v. State, 848 A.2d 692, 703 (Md. Ct. Spec. App. 2004). Here, D entered a "blind plea." While it is true a trial court may reject a plea, this is not as likely when a defendant enters a blind compared to a plea agreement show terms at court may not wish to accept. At the plea hearing, the trial court indicated that it accepted D's plea. Held, judgment affirmed.

TITLE: Howard v. State
INDEX NO.: P.2.
CITE: (9-19-01), Ind. App., 755 N.E.2d 242
SUBJECT: Speedy trial - interplay between CR4(C) & Interstate Agreement on Detainers (IAD)
HOLDING: Criminal Rule 4(C) does not apply when D is incarcerated in foreign jurisdiction. Brown, 497 N.E.2d 1049. In cases involving speedy trial rights of Ds incarcerated in foreign jurisdictions, Ct. applies IAD rather than CR 4(C). Here, D was charged with battery but before trial was incarcerated in Kentucky. Thus, CR 4(C) was inapplicable for D's period of incarceration in Kentucky. Interstate Agreement on Detainers (Ind. Code 35-33-10-4) would normally apply; however, IAD requires that person be already convicted & serving time, which was not case here. Therefore, the 180-day period in which Ds must be brought to trial under IAD was never triggered. Further, CR 4(C) was not violated because D was brought to trial within 300 days of his return to Indiana. Held, conviction affirmed.

TITLE: Hood v. State
INDEX NO.: P.2.
CITE: (10/24/90), Ind., 561 N.E.2d 494)
SUBJECT: Interstate Act on Detainers (IAD) - time limitations; waiver
HOLDING: Tr. Ct. did not err in denying D's motion to dismiss for failure to try him within 180 days as required by IAD, where D failed to object to setting of trial date outside 180-day period. D was incarcerated out-of-state, & after Ind. filed detainer, D filed notice requesting prosecution in Ind., pursuant to IAD, set out at IAC 35-33-10-4(3). When such request is made, D must be prosecuted within 180 days. After 180 days passed, D here filed motion to dismiss, which was denied because D had failed to object when trial date was set outside 180-day period. On appeal, D challenges this finding of waiver. When Tr. Ct. sets trial date which is beyond time period allowed, & D is or should be aware of this, D has obligation to object at earliest opportunity so that Tr. Ct. can reset trial for date within proper period. Pasha 524 N.E.2d 310; Randall 455 N.E.2d 916. Same rule applies under CR 4, governing speedy trial rights generally. Here, D failed to object to improper trial setting & Tr. Ct. properly found waiver. Held, affirmed. Shepard, C.J., CONCURS IN RESULT.

RELATED CASES: Smith, App., 882 N.E.2d 739 (D's completion, signing & submission of pre-printed form to prison librarian requesting final disposition of out-of-state charges was not sufficient to trigger IAD's 180-day time limitation).

TITLE: Mason v. State
INDEX NO.: P.2.
CITE: (9/30/82), Ind., 440 N.E.2d 457
SUBJECT: Detainers - escape; effect on pending appeal
HOLDING: D, sent to State A pursuant to Interstate Agreement on Detainers, who escapes from State A & is arrested & held in State B on unrelated charges, is deemed outside the jurisdiction of IN for purpose of determining his appeal. Here, D expressly told Tr. Ct. at sentencing that he wished to initiate an appeal. In 1/82, he was transported to KS. In 3/82, he timely perfected his IN appeal. In 4/82, he escaped from KS. D later was arrested in TX & remains in custody in TX. Ct. *cites* Kirkman 114 N.E.2d 878 to support holding. (In Kirkman, D escaped from IN Reformatory & at time of his appeal was incarcerated for the commission of new crimes in another state.) Held, appeal dismissed; conviction affirmed. **NOTE:** Ct. does not discuss possibility of continuing jurisdiction under Ind. Code 35-2.1-2-4 (now 35-33-10-4). But see Art. 9(4). Support for continuing jurisdiction is found in Art. 5(e) & (g) & Art. 9(1) (liberal construction) of the Act.

TITLE: New York v. Hill

INDEX NO.: P.2.

CITE: 528 U.S. 110, 120 S.Ct. 659, 145 L.Ed2d 560 (2000)

SUBJECT: Role of counsel, waiver, speedy trial, IAD

HOLDING: Defense counsel's agreement to a trial date outside the time period required by Article III of the Interstate Agreement on Detainers waived the defendant's speedy trial rights under the IAD. More broadly, this case suggests that the defendant's right to a speedy trial in general is among those rights which may be waived by action of counsel without a personal, informed waiver by the defendant.

TITLE: Ramirez v. State
INDEX NO.: P.2.
CITE: (2d Dist. 10/26/83), Ind. App., 455 N.E.2d 609
SUBJECT: Detainers - purpose; remedy for failure to comply with
HOLDING: Tr. Ct. did not err in denying D's pretrial motion to dismiss information for state's failure to comply with agreement on detainers. Here, IN sought temporary custody from MI to try D on Cause #470. Once D was in IN, state tried D on Causes #424 (3 counts dealing in Schedule IV controlled substance) & #470 (2 counts dealing in marijuana). Agreement on Detainers (IC 35-2.1-2-4, now Ind. Code 35-33-10-4) encourages expeditious/orderly disposition of outstanding charges. Jurisdiction over D's person was not defeated by state's failure to comply with Agreement on Detainers. Manner in which D is brought before Ct. has no effect on Ct.'s jurisdiction over him/her. Frisbie v. Collins, (1952) 342 U.S. 519, 72 S.Ct. 509, 96 L.Ed. 541. Ct. does not countenance state's failure to comply. D may have remedy, but it is not dismissal. Held, conviction affirmed.

RELATED CASES: Dorsey 490 N.E.2d 260 (Extrad 59; interstate agreement on detainers does not apply where D was held in jail in MI on outstanding charge, as well as serving time for earlier sentence; Act is intended to benefit persons serving time in prison - D was not in prison).

TITLE: Reed v. Farley
INDEX NO.: P.2.
CITE: 512 U.S. 339, 114 S.Ct. 2291, 129 L.Ed.2d 277 (1994)
SUBJECT: Interstate Act on Detainers (IAD) - federal habeas
HOLDING: State's violation of 120-day limit in which to try out-of-state prisoner under IAD is not cognizable in federal habeas proceeding filed pursuant to 28 U.S.C 2254, where prisoner failed to object to scheduled trial date until after expiration of 120-day period & suffered no prejudice as result of error. Three-justice lead opinion wrote that failure to object & lack of prejudice rendered violation mere technical of non-constitutional procedural rule, & thus not cognizable in federal habeas. Two additional justices wrote that no claimed violation of 120-day limit would be cognizable on federal habeas. All five majority justices look to Hill v. U.S., 368 U.S. 424 (1962), & its progeny, which establish that federal habeas review under 28 U.S.C 2255 is available for violations of federal law only when the error amounts to "fundamental defect which inherently results in a complete miscarriage of justice, [or] an omission inconsistent with the rudimentary demands of fair procedure." Blackmun, Stevens, Kennedy, & Souter, JJ., DISSENT.

TITLE: Scrivener v. State
INDEX NO.: P.2.
CITE: (11/12/82), Ind., 441 N.E.2d 954
SUBJECT: Detainers - failure to object to trial setting
HOLDING: 180-day period (within which trial must occur) begins when D's request for final disposition, made pursuant to Ind. Code 35-2.1.2-4 (now Ind. Code 35-33-10-4), is delivered to prosecuting attorney & appropriate Ct. Holland 352 N.E.2d 752; Pethtel, App., 427 N.E.2d 891. Failure to object at time trial was set or during remainder of time limit to setting of trial beyond 180-day period precludes D from relief (discharge) when trial occurs beyond 180-day period. Here, D's objection was not timely; consequently, he is precluded from relief. Held, no error; burglary & theft convictions affirmed.

RELATED CASES: Reid, App., 670 N.E.2d 949 (D waived issue by sitting idly by & failing to object to rescheduled trial date at any time during 180-day period); Reed 491 N.E.2d 182 (120-day time period; same holding).

TITLE: Smith v. Hooey

INDEX NO.: P.2.

CITE: 393 U.S. 374; 89 S.Ct. 575; 21 L.Ed.2d 607 (1969)

SUBJECT: Constitutional requirement - speedy trial request by prisoner held in another jurisdiction

HOLDING: As constitutional matter, states bringing charges against prisoner held by other sovereignties must make diligent, good faith effort to bring prisoner to trial when prisoner requests speedy trial. Speedy Trial Clause of Sixth Amendment is meant not only to prevent undue and oppressive incarceration prior to trial, but also to minimize anxiety and concern accompanying public accusation and to limit possibilities that long delay will impair ability of accused to defend himself. U.S. v. Ewell, 383 U.S. 116 (1966). Here, prisoner being held in federal penitentiary at Leavenworth, Kansas was indicted in Harris County, Texas for theft. For six years, prisoner sent letters to Texas court requesting speedy trial and, eventually, verified motion to dismiss charges for want of prosecution. No action taken by Texas court, and prisoner brought mandamus proceeding, which Texas Supreme Court denied. Because above purposes of Speedy Trial Clause were both aggravated and compounded by accused being imprisoned by another jurisdiction, prisoner was entitled to speedy trial in Texas. Held, order of Texas Supreme Court set a side and case remanded.

RELATED CASES: Pallet, 381 N.E.2d 452 (Ind. Code § 35-33-10-4 is intended to secure constitutional guarantees of right to speedy trial for prisoners held in one state who have criminal charges outstanding against them in another state).

TITLE: State v. Greenwood
INDEX NO.: P.2.
CITE: (5-21-96), Ind., 665 N.E.2d 579
SUBJECT: Interstate Agreement on Detainers (IAD) - prosecution barred after erroneous discharge
HOLDING: Although D's pro se demand for speedy trial did not comply with requirements of IAD, and Tr. Ct. erred in dismissing charges, anti-shuffling provision of IAD barred subsequent prosecution. 180-day period within which D must be brought to trial under IAD commences when request for final disposition made pursuant to Ind. Code 35-33-10-4 has been delivered to prosecuting attorney and Ct. having jurisdiction. Scrivener v. State, 441 N.E.2d 954 (Ind. 1982). To be made "pursuant to" provisions of IAD, statute requires that D deliver his notice to custodial officials so they can forward notice along with appropriate certifications to prosecuting authorities. Steelman v. State, 486 N.E.2d 523 (Ind. 1985). Here, D failed to provide his notice to custodial authorities, thus his speedy trial demand was insufficient to trigger running of 180- day time period under IAD. Even if D's notice had been sufficient, he waived right to speedy trial when his attorney moved for trial date outside 180-day period and D failed to object. Because Tr. Ct. dismissed charges with prejudice and ordered D to be returned to Illinois, "anti-shuffling" provision of IAD protected D from subsequent prosecution. Plain language of Ind. Code 35-33-10-4, Art. 3(d), requires dismissal with prejudice if prisoner is returned to original place of imprisonment prior to trial. Held, transfer granted, judgment dismissing charges affirmed.

TITLE: Vaden v. State
INDEX NO.: P.2.
CITE: (5th Dist., 5-26-99), Ind. App., 712 N.E.2d 522
SUBJECT: Interstate Agreement on Detainers (IAD) - tolling provision; prisoner's unavailability
HOLDING: IAD's 180-day time limit for bringing prisoner to trial after he requested disposition of outstanding charges was tolled while D was unavailable for trial. D was unavailable for sixty-one (61) days because his request for disposition of detainer against him in Kentucky caused him to be released to that jurisdiction. Upon D's return to federal custody in Indiana, Tr. Ct. set jury trial within 180-day period. However, Tr. Ct. continued trial to date outside 180-day period due to Ct. congestion. IAD provides that when computing 180 days imposed by Article 3, running of time periods shall be tolled whenever & for as long as prisoner is unable to stand trial, as determined by Ct. Ind. Code 35-33-10-4(Article 6). Whether D intended to be tried in Indiana first does not control issue of whether statutory period was tolled during his period of unavailability. D should not be able to start 180-day period in any number of jurisdictions, & then watch them "ring out" one by one while he is held in first jurisdiction that was able to set trial date. Held, denial of motion to dismiss affirmed.

TITLE: Webb v. State
INDEX NO.: P.2.
CITE: (7/30/82), Ind., 437 N.E.2d 1330
SUBJECT: Interstate detainer - return without trial; waiver of dismissal
HOLDING: D has a right to dismissal of charges, with prejudice, if he is returned to place of original imprisonment before being tried in receiving state. D, though unaware of right, can waive it by requesting to be returned to place of original imprisonment. US v. Eaddy, (CA6 1979) 595 F.2d 341. See also US v. Palmer, (CA3 1978) 574 F.2d 164; Camp v. US, (CA8 1978) 587 F.2d 397; US v. Scallion, (CA5 1977) 548 F. 2d 1168. Waiver need only meet voluntariness standard. Here, D was returned to IN 4 times, but because of statement of facts & grounds supporting D's MCE, D limited review to one return & Ct. finds D voluntarily waived right. Held, no error.

TITLE: Williams v. State

INDEX NO.: P.2.

CITE: (1/31/89), Ind., 533 N.E.2d 1193

SUBJECT: Speedy trial - interstate agreement on detainers (IAD) & CR 4; failure to object to co-D's continuances as waiver

HOLDING: Failure to object to setting of trial date beyond 180-day period waived rights under IAD. Pethtel, App., 427 N.E.2d 891. Failure to object to later continuance by co-D also constitutes waiver. Id. CR 4 does not apply to persons when IAD is applicable, Brown 497 N.E.2d 1049. After filing notice under IAD on 4/20/86, D's trial was set for 7/24/86, within 180-day limitations period set under IAD. Co-D moved for continuance on that date, which was allowed without objection by D (who appeared without counsel). On 9/11/86, D appeared by counsel, filed motion for discharge under CR 4(B). Again, continuance was granted to co-D without objection from D, to 9/25/86. Motion for discharge was denied. Trial began 9/25/86. Failing to object to untimely trial dates waives rights under IAD. CR 4 does not apply to persons when IAD is applicable, Brown 497 N.E.2d 1049. Assuming it did, failure to object to co-D's motion for continuance when that continuance had effect of delaying trial beyond 70-day period constitutes waiver of CR 4(B) rights. Wright 363 N.E.2d 1221; Cody 290 N.E.2d 38. Affirmed.

RELATED CASES: Sweeney, 704 N.E.2d 86 (inapplicability of CR4 to Ds in foreign jurisdictions should not extend to Ds who are brought into Ind. under writs or other forms of temporary custody).

P. EXTRADITION/SECURING DEFENDANT'S ATTENDANCE

P.3 Securing Defendant's Attendance

TITLE: Sweeney v. State
INDEX NO.: P.3.
CITE: (12-18-98), Ind., 704 N.E.2d 86
SUBJECT: Securing D's attendance - ad prosequendum writ vs. Interstate Agreement on Detainers (IAD)
HOLDING: Writ of habeas corpus ad prosequendum issued by state Ct. to federal prison authorities in Kentucky, directing production of prisoner for trial in Ind. on murder charge, was not a detainer within meaning of IAD. Pursuant to Ind. Code 35-33-10-5, Cts. in Ind. have statutory authority to issue Writs to secure presence of prisoners in federal custody for purposes of criminal prosecution. Decision of whether to use detainer or Writ to obtain custody of prisoner only arises when prisoner is confined in federal prison; Writs are not available with respect to prisoners incarcerated or confined in other states. "Anti-shuffling" provision of IAD prohibits transporting of Ds back & forth between jurisdictions prior to trial. Writ does not constitute detainer for purposes of IAD, regardless of whether Writ is issued by state or federal Ct. Because there was no indication that detainer in this case was ever lodged against D, nor was there any indication that State intended Writ to serve as detainer, anti-shuffling provision of IAD was never implicated & D was not entitled to dismissal of murder charge on that basis. Writ statute & not IAD statute was controlling in this case. Held, judgment affirmed.

Note: Ct. also held that when D was within jurisdiction & control of Ind. authorities, he was entitled to protections of Criminal Rule 4(C), despite fact that D was incarcerated in foreign jurisdiction at time charges were filed. IAD applies for purposes of speedy trial when detainer is lodged & not simply because D is in foreign jurisdiction. Decision contains extensive discussion of history & function of both IAD & Writ statutes, as well as advantages & disadvantages to State's use of either detainers or Writs in obtaining prisoners in federal custody.

RELATED CASES: Spalding, 992 N.E.2d 881 (Ind. Ct. App 2013) (Court disagreed with McCloud (below) to the extent it holds that Criminal Rule 4 applies whenever the Interstate Agreement on Detainers does not); McCloud, 959 N.E.2d 879 (Ind. Ct. App 2011) (when the State has failed to file a detainer against a D in federal custody, IAD does not apply; where D was already charged in Indiana prior to being sent to federal prison, CR 4 and Sixth Amendment applied).