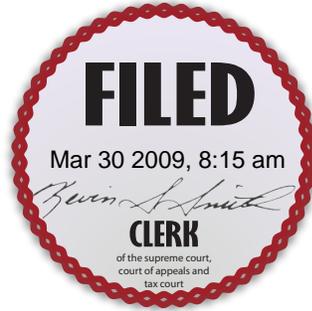


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)
)
 Appellant-Plaintiff,)
)
 vs.) No. 87A05-0809-CR-565
)
 BRIAN CUSTER,)
)
 Appellee-Defendant.)

APPEAL FROM THE WARRICK CIRCUIT COURT
The Honorable David O. Kelley, Judge
Cause No. 87C01-0505-FD-43

March 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

The State of Indiana (“the State”) appeals the trial court’s dismissal, pursuant to the Interstate Agreement on Detainers, Indiana Code Section 35-33-10-4, (“the I.A.D.”), of a charge of Failure to Return to Lawful Detention, a Class D felony, which the State had filed against Brian Custer (“Custer”). We affirm.

Issue

The State presents the issue of whether the I.A.D. was inapplicable to Custer because the State had never lodged a detainer against him.¹

Facts and Procedural History

During May of 2005, Custer was incarcerated at the Henderson County Detention Center in Henderson, Kentucky. On May 2, 2005, the State filed an Information alleging that Custer had failed to return to lawful detention. On May 5, 2005, an arrest warrant was issued for Custer. On May 23, 2005, a case chronology was mailed to Custer at the Kentucky facility. On August 29, 2005, Custer served upon the Warrick County (Indiana) Prosecutor a notice of place of imprisonment and request for final disposition. On March 15, 2006, Custer filed a pro se motion to dismiss the Indiana charge, contending that the State failed to bring him to trial within the 180 day period following his notice of place of imprisonment and request for final disposition, as required by the I.A.D.

¹ The State also contends that Custer did not achieve proper service upon the trial court of his notice of place of imprisonment and request for final disposition. However, this contention was not raised at the hearing and thus there was no development of relevant facts in the record for our review.

On October 3, 2006, an initial hearing was conducted on the Indiana charge. The trial date was set and then continued. On May 15, 2008, the trial date was vacated and a hearing on the motion to dismiss was scheduled. On June 30, 2008, the trial court conducted a hearing and the parties were afforded the opportunity to submit written authority. On September 8, 2008, the parties appeared and the trial court granted Custer's motion to dismiss. The State now appeals.

Discussion and Decision

I.A. Standard of Review

A ruling upon a motion to dismiss under the I.A.D. presents a question of law and is reviewed de novo. Conn v. State, 831 N.E.2d 828, 830 (Ind. Ct. App. 2005), trans. denied. However, findings underlying the ruling are reviewed pursuant to a clearly erroneous standard. State v. Robinson, 863 N.E.2d 894, 896 (Ind. Ct. App. 2007), trans. denied.

I.B. Analysis

The I.A.D. is an agreement among most of the United States, including Indiana and Kentucky, providing for the return of prisoners for the resolution of charges from another jurisdiction. See Ind. Code § 35-33-10-4. Indiana's codification of the I.A.D. provides in relevant part:

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, he shall be brought to trial within one hundred eighty (180) days after he shall have 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 imprisonment and his request for a final disposition to be made of the indictment, information or complaint[.]

Ind. Code § 35-33-10-4, art. 3(a). “A prisoner’s request for final disposition only triggers the I.A.D. requirement that he be brought to trial within 180 days if it is made in response to a detainer lodged against the prisoner on the basis of an ‘untried indictment, information or complaint.’” Crawford v. State, 669 N.E.2d 141, 148 (Ind. 1996) (citing Ind. Code § 35-33-10-4, art. 3(a) and (d)). A warrant does not serve as a detainer “unless it [is] based upon an untried indictment, information or complaint.” Id.

The State contends that the trial court erred in dismissing the charge against Custer because the I.A.D. was inapplicable. According to the State, “No detainer was lodged [against Custer] while he was incarcerated in Kentucky. There was, instead, only an arrest warrant.” Appellant’s Brief at 6. The State ignores the fact that the May 5, 2005 warrant for Custer was based upon an untried information (filed May 2, 2005).

Because Custer’s request for final disposition was made in response to a detainer lodged against him on the basis of an untried information and the State failed to try him within 180 days, the trial court properly granted Custer’s motion for dismissal.

Affirmed.

MATHIAS, J., and BARNES, J., concur.