

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 5, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0375-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

TIMOTHY A. COLLINS,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dodge County:
JOHN R. STORCK, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. The State of Wisconsin appeals an order which dismissed, with prejudice, its battery prosecution of Timothy Collins as a result of the State's violation of the speedy trial provision of the Interstate Detainer Act,

codified in WIS. STAT. § 971.11 (1999-2000).¹ The State concedes the violation but contends that the dismissal should have been without prejudice. We affirm based on our recent decision in *State v. Davis*, 2001 WI App 63, ___ Wis. 2d ___, ___ N.W.2d ___.

¶2 The relevant facts are undisputed. The State charged Collins with battery by a prisoner, as a repeat offender, on April 16, 1999. Collins requested disposition of the case within 120 days pursuant to WIS. STAT. § 971.11(1) of the Interstate Detainer Act. The Dodge County District Attorney received the request on August 2, 1999, requiring the case to be tried by November 30, 1999. When the case had not been tried by December 10, 1999, Collins moved for dismissal. The trial court dismissed the case with prejudice on December 20, 1999.

¶3 The State argues that the trial court lacked authority to dismiss its criminal complaint with prejudice because trial courts lack inherent authority to dismiss criminal actions with prejudice prior to the attachment of jeopardy in the absence of express statutory authority, and the Interstate Detainer Act does not specify whether dismissals are to be with or without prejudice. *State v. Braunsdorf*, 98 Wis. 2d 569, 570, 297 N.W.2d 808 (1980); WIS. STAT. § 971.11(7). We recently rejected this exact argument in *Davis*, however, and do not have the power to overrule precedent of our own court. *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). The trial court has discretion to dismiss with or without prejudice for violations under the Interstate Detainer Act. *Davis*, 2001 WI App at ¶21. We are satisfied that the trial court properly exercised its discretion here when it noted that the failure to dismiss with prejudice

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

would have little effect and give the State little incentive to bring prisoner cases such as this to trial promptly. *Id.* at ¶¶18-19.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

