

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 17, 2003**

Cornelia G. Clark  
Clerk of Court of Appeals

**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.

**Appeal No. 02-2436-CR**

**Cir. Ct. No. 00-CF-30**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**CHARLES B. BUSHONG,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment and an order of the circuit court for Sauk County: PATRICK J. TAGGART, Judge. *Affirmed.*

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Charles Bushong appeals from a judgment convicting him of theft by false representation and from an order denying his motion for postconviction relief. He contends that his conviction should be set aside and the charges against him dismissed due to an alleged violation of the time limits for trial under the Interstate Agreement on Detainers. We conclude that the

facts of this case do not show a violation of the detainer statute. Accordingly, we affirm.

### **BACKGROUND**

¶2 The State of Wisconsin charged Bushong with theft by fraud on January 31, 2000, based on allegations that he took possession of a vehicle that he obtained through financing with a false name. An arrest warrant was issued. Colorado authorities identified the stolen vehicle and arrested Bushong on March 23, 2001, ultimately charging him with a number of misdemeanors for other offenses committed in that state.

¶3 The governor of Wisconsin sent an extradition request to Colorado. Bushong contested extradition, and was advised of his rights by a Colorado court on March 29, 2001. Bushong asserts, and the State says it lacks sufficient knowledge to concede or deny, that Bushong was never subsequently served with a copy of an extradition warrant.

¶4 Docket entries show that a Colorado court sentenced Bushong to six months in jail on June 7, 2001. A Colorado Department of Corrections official avers in an affidavit that his office received a copy of the governor's warrant for Bushong's return on June 18, 2001. A Colorado corrections employee subsequently contacted the Sauk County Sheriff's office and ascertained that Wisconsin officials would like to have a detainer lodged against Bushong so that the Wisconsin officials could be notified when Colorado would make Bushong available to be transported to Wisconsin. On July 26, 2001, Colorado officials lodged the governor's warrant as a detainer, and advised Bushong in writing of his rights under the Interstate Agreement on Detainers (IAD).

¶5 The Colorado parole board released Bushong to the Wisconsin detainer just before his scheduled release date, and Bushong was transported to the Sauk County Jail on August 20, 2001, to face the Wisconsin theft by fraud charge. On January 2, 2002, Bushong moved to dismiss on the grounds that the State had not brought him to trial within 120 days of his arrival in Wisconsin, as he claimed was required by the IAD.

## DISCUSSION

¶6 The IAD, codified in Wisconsin at WIS. STAT. § 976.05 (2001-02),<sup>1</sup> sets forth “procedures by which a member State may obtain for trial a prisoner incarcerated in another member jurisdiction and by which the prisoner may demand the speedy disposition of certain charges pending against him in another jurisdiction.” *United States v. Mauro*, 436 U.S. 340, 343 (1978). Whether a certain set of facts triggers the protection of the IAD is a question of law subject to *de novo* review. *State v. Eesley*, 225 Wis. 2d 248, 253-54, 591 N.W.2d 846 (1999).

The central provisions of the IAD are Articles III and IV, enacted in Wisconsin as WIS. STAT. § 976.05(3) and (4). Generally, Article III ... provides procedures whereby a prisoner against whom a detainer has been lodged, can demand a speedy disposition of the charges. When a detainer is filed against a prisoner, the warden must promptly inform the prisoner of such detainer and of his or her right to demand disposition. If the prisoner makes such a request, the trial must commence within 180 days of the request. If the receiving state fails to have a trial on the outstanding indictment, information or complaint within the prescribed time period and before the prisoner is

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

transported back to the original place of imprisonment, the court is required to dismiss such charges with prejudice.

Article IV ... provides ... [o]nce a prosecutor has filed a detainer against a prisoner in another jurisdiction, he or she may secure the prisoner's presence by presenting the sending state with a "written request for temporary custody."... A trial must be commenced within 120 days after the arrival of the prisoner in the receiving state. If a trial is not held on the charges within 120 days or prior to the prisoner being returned to the original place of imprisonment, the charges no longer have any effect, and the court must enter an order dismissing the charges with prejudice.

*Id.* at 254-57 (citations omitted).

¶7 Here, Bushong never requested speedy disposition of the pending charges against him under Article III. He contends that he was entitled to trial within 120 days after his return to Wisconsin under Article IV because the governor's warrant, initially intended for extradition purposes, was lodged against him as a detainer. We disagree.

¶8 First, the lodging of a detainer does not in and of itself trigger any deadlines for trial. Rather, as described above, the lodging of a detainer triggers an opportunity either for the defendant to request that trial be held within 180 days or for an appropriate official from the requesting state to file a written request for temporary custody, which in turn triggers a deadline for trial 120 days after the defendant's transfer to the requesting state.

¶9 The lodging of the detainer here did nothing more than put the Colorado authorities on notice that Bushong was wanted for trial in Wisconsin

upon his release. It did not operate to secure Bushong's transfer.<sup>2</sup> See *Eesley*, 225 Wis. 2d at 259. If Wisconsin authorities had wished to obtain Bushong for immediate trial under Article IV, rather than waiting for Colorado to release him, they would have needed to follow the lodging of the detainer with a written request for temporary custody, approved, recorded and transmitted by the Wisconsin court having jurisdiction of the charge. WIS. STAT. § 976.05(4)(a). They did not do so. Therefore, the 120-day deadline for trial was inapplicable. Bushong retained the right to request a speedy trial under WIS. STAT. § 971.10 and the Sixth Amendment of the United States Constitution, but did not exercise it.

*By the Court.*—Judgment and order affirmed.

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

---

<sup>2</sup> Bushong seems to argue that the detainer must have been the actual mechanism for his transfer, because he was never served with the governor's warrant, as he claims he should have been under required extradition procedures. However, the possibility that the extradition procedure may have been flawed does not mean that extradition did not occur. Any such flaw would merely have given Bushong potential grounds to challenge the extradition, which is not before us on this appeal.

