

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 13, 2004

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. 03-0429-CR

Cir. Ct. No. 01CF005345

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JEFFREY TOWNSEND,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Remanded with directions.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

¶1 WEDEMEYER, P.J. Jeffrey Townsend appeals from a judgment entered after a trial court found him guilty of one count of armed robbery with threat of force, contrary to WIS. STAT. § 943.32(2) (1997-98).¹ He claims the trial

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

court erred in denying his motion to dismiss based on a failure to comply with the statutory procedures of the Interstate Agreement on Detainers contained in WIS. STAT. § 976.05(3)(c). Because the court and the parties erroneously placed the burden of proof on Townsend during the motion to dismiss and because the current state of the record is factually deficient to permit meaningful review, we remand this case to the trial court with instructions to conduct an evidentiary hearing unlimited in scope to further develop the factual record on all issues relating to this appeal, and to apply the proper burden of proof.

I. BACKGROUND

¶2 The State of Wisconsin charged Townsend with one count of armed robbery with threat of force based on an incident that occurred on September 14, 1997, in West Allis. On October 14, 1997, the West Allis Police Department was advised that Townsend was in custody in Des Plaines, Illinois.

¶3 On November 13, 1997, Detective Joyce Olson of the Milwaukee County Sheriff's Department received information from the Cook County Sheriff's Department that Townsend refused to sign a waiver of extradition. As a result, Olson obtained a Governor's Warrant from Wisconsin's governor, signed on December 23, 1997. This warrant, together with an Application for Requisition, was sent to the governor of Illinois. The governor of Illinois signed a warrant on January 6, 1998, and it was forwarded to the Cook County Sheriff's Department, ordering the arrest of Townsend. On February 11, 1998, Olson received a response from Cook County stating:

“Your Governor's Warrant was served on 10, February, '98, on Townsend, Jeffrey. This subject has filed a writ to have a hearing on the Governor's Warrant. This subject is not ready for pick up as of yet. When this subject is ready

for pick up, we will advise. We will give your Department at least ten days to pick up. Any questions, please call.”

Olson did not hear anything more from the Cook County Sheriff’s Department. Townsend remained in the Cook County Jail and was sentenced by the Illinois court on January 14, 1999. He was sent initially to Joliet prison and subsequently, on March 3, 1999, he was sent to Hill Correctional Center in Galesburg, Illinois. The paperwork which came with him indicated that he had outstanding warrants, outstanding criminal charges, and was wanted by the State of Wisconsin.

¶4 During the assessment at Hill Correctional, it was determined that Townsend should be classified as a moderate escape risk because of the outstanding charges and, as a result, he was given a blue identification card to reflect his status as a moderate escape risk. The record supervisor at Hill Correctional testified that most inmates ask why they are getting a blue identification card, and the reason for amending their risk status is explained to them. The paperwork also indicated the existence of the Governor’s Warrant.

¶5 On October 4, 1999, Olson was following up on Townsend’s case and sent a letter to Hill Correctional. A certified felony warrant was attached to the letter and requested a detainer be placed on Townsend. Hill Correctional marked Townsend’s master file to indicate that he was wanted by the Milwaukee County Sheriff and sent a letter to the Milwaukee County Sheriff acknowledging receipt of the detainer request.

¶6 The customary policy at Hill Correctional, upon receipt of a detainer request, is to have the record officer advise the inmate of the detainer request and have the inmate sign Form I of the Agreement on Detainers. Form I indicates who has lodged the detainer request and advises the inmate of his or her rights. The

inmate retains a copy of the form and a copy is placed in the inmate's master record file.

¶7 Townsend's master record file at Hill Correctional does not contain any detainer form. There is a note in the file dated September 28, 2001, indicating that the form was not completed. There is also a reference in the file that Townsend asked about his out-of-state warrant and his parole on July 28, 2001.

¶8 When Townsend was to be paroled from Hill Correctional, the issue of extradition was raised. He waived extradition and voluntarily returned to Wisconsin to face the charge in this case. Before trial, Townsend moved to dismiss the instant charge alleging that the Interstate Agreement on Detainers statute, WIS. STAT. § 976.05, was not followed. Specifically, he contended that Illinois prison officials failed to promptly inform him of the source and contents of the detainer lodged by Wisconsin and that they had failed to advise him of his right to make a request for final disposition of the case.

¶9 The trial court held an evidentiary hearing on January 18, 2002, and on February 15, 2002. At the conclusion of the hearing, the trial court denied the motion. It ruled that the burden of proving the violation rested with Townsend and that he failed to satisfy that burden. The case proceeded to a bench trial on stipulated evidence. The trial court found Townsend guilty of armed robbery by threat of force. He was sentenced to nine years in prison. Townsend now appeals.

II. DISCUSSION

¶10 The Interstate Agreement on Detainers (IAD) has been adopted by both Wisconsin and Illinois, WIS. STAT. § 976.05 and 730 ILL. COMP. STAT. ANN. 5/3-8-9 (West 2003), and facilitates resolution of charges pending against a

prisoner in one state while he or she is in custody in another state. The IAD establishes procedures by which a prisoner, incarcerated in one state (the sending state), may demand the speedy disposition of “any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner,” by another state (the receiving state). WIS. STAT. § 976.05(3)(a).

¶11 The process begins when the receiving state lodges a detainer with the sending state based upon an indictment or complaint. *See id.* Once that has occurred, the warden of the sending state must inform the prisoner of the detainer and his rights to file a request for disposition. If the prisoner requests disposition, the warden must forward the request, along with a certificate of availability, to the appropriate prosecuting official and court in the receiving state. *Id.* The written request operates as a waiver of extradition with respect to the pending charges. WIS. STAT. § 976.05(3)(e). The receiving state must then bring the prisoner “to trial within 180 days.” WIS. STAT. § 976.05(3)(a). If a trial does not occur during this time period and a continuance is not obtained for “good cause,” the trial court must dismiss the indictment, information, or complaint with prejudice. WIS. STAT. § 976.05(3)(a) and (5)(c). If the prisoner does not request final disposition, the receiving state may present a written request for temporary custody and commence a trial within 120 days. WIS. STAT. § 976.05(4).

¶12 Townsend concedes that Wisconsin properly lodged a detainer against him. He argues, however, that he was never informed of the detainer, who lodged it, or the procedures for requesting a final disposition of the charges. Accordingly, he contends that the notice provisions of the IAD, and therefore the “speedy trial” provisions of the IAD, were violated; he contends that the proper remedy for such violations is dismissal of the charges. The State responds that even if there were IAD violations, dismissal is not the proper remedy. The State

argues that Townsend's complaint about not having the Wisconsin charges timely resolved in compliance with IAD provisions is disingenuous because this was not purely a detainer case. Wisconsin promptly notified Townsend as to the pending Wisconsin armed robbery, threat of force, charges by requesting extradition. Townsend responded by fighting extradition and requesting a hearing on the Governor's Warrant. What happened at that hearing, or during the period of time up until his voluntary return to Wisconsin in the summer of 1991, is not clear.

¶13 This court heard oral argument in this case on December 15, 2002. At that time, the State conceded that the burden of proving compliance with the notice provisions of the IAD rests with the State and not with the prisoner. The record, however, is sparse with respect to the detainer procedure, the extradition procedure, and any other efforts related to bringing Townsend back to face the outstanding Wisconsin charges or with respect to Townsend's personal knowledge. In fact, Townsend was not called to testify by either side during the dismissal hearing. Both sides concede that the record does not contain any information as to why Townsend initially fought extradition and subsequently voluntarily agreed to return to Wisconsin, whether Townsend was an experienced prisoner with regard to extradition and detainer procedures, whether and at what point Townsend was making his own decisions or being advised by counsel, exactly what happened with the detainer filed by Wisconsin and acknowledged by Illinois, whether any evidence exists with respect to providing statutory or other notice of the detainer to Townsend, and a variety of other peripheral issues. Given this set of circumstances, it would be unwise and unfair for this court to decide this appeal without requiring further factual development in this matter.

¶14 Accordingly, because the trial court applied the incorrect burden of proof in requiring Townsend to prove that he had received the proper statutory

notice with respect to the detainer and because this issue cannot be properly decided without further factual development of the record, we remand the matter to the trial court with directions to conduct an evidentiary hearing. The record needs to be further developed as to the procedures utilized in this case, including but not limited to the extradition proceedings and the detainer lodged against Townsend. All persons with knowledge on a relevant issue should be summoned to appear for questioning so that the important issues in this case may be decided with a proper foundation. The burden of proving compliance with the notice provisions of the IAD rests with the State.

¶15 Once the hearing has been conducted and the trial court has made findings and rendered conclusions, the case shall be returned to this court for completion of the appeal.

By the Court.—Cause remanded with directions.

Not recommended for publication in the official reports.

