COURT OF APPEALS
DECISION
DATED AND FILED

March 25, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1821-CR **Cir. Ct. No. 2001CF920**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CALVIN C. SHRIVER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: MITCHELL J. METROPULOS, Judge. *Affirmed*.

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Calvin Shriver, pro se, appeals a judgment convicting him of first-degree sexual assault of a child.[1] Shriver argues the circuit court erred by denying his motion to dismiss the charge based on alleged violations of the Interstate Agreement on Detainers (IAD). We conclude the court properly denied Shriver's motion to dismiss, and affirm.

BACKGROUND

¶2 On December 7, 2001, a criminal complaint was filed in Outagamie County charging Shriver with one count of first-degree sexual assault of a child. The complaint alleged Shriver sexually assaulted an eleven-year-old girl in the spring of 1996. A warrant for Shriver's arrest was issued on January 8, 2002, and an amended warrant was issued about two weeks later. A detainer was then placed on Shriver, who was confined at Whiteville Correctional Facility, a private prison in Tennessee, serving sentences imposed in Outagamie County Case Nos. 1998CF357 and 1998CF358.

¶3 On February 5, 2002, Shriver signed a form entitled "Detainer Acknowledgment." Whiteville employee Karen Weeks witnessed his signature. The form stated:

> This is to acknowledge that on this date I have been notified by the authorities of the above-named institution that a Detainer has been filed against me on behalf of the County of OUTAGAMIE in the City of APPLETON, WISCONSIN charging me with the following offense(s):

[1] Attorney John Miller Carroll filed briefs on behalf of Shriver. Following briefing, Attorney Carroll's license to practice law was suspended. Attorney Carroll notified us of the suspension, and we removed him from the case.

> CASE #01CF920 WARRANT FOR FAILURE TO APPEAR – CRIMINAL COMPLAINT FOR SEXUAL ASSAULT OF CHILD UNDER AGE 13.

The form further stated, "I also acknowledge … I was informed of my right to a prompt disposition of the case and that I could consult with my attorney before making a decision." Underneath this language, the form gave Shriver the option to check one of two boxes—the first indicating he wished to request a prompt disposition of the case, and the second indicating he did not. Shriver did not check either box. In fact, the form Shriver signed has "X" over the entire checkbox section.

¶4 No further action was taken on the pending sexual assault charge against Shriver until 2012. On November 16, 2012, Shriver moved to dismiss the complaint, arguing the State had violated the IAD by failing to properly inform him of "the detainer and its implications," particularly his right to request a prompt disposition of the charge.

¶5 At a hearing on the motion to dismiss, Shriver testified he was in a "sally port" at Whiteville Correctional Facility sometime in 2002 with twelve to twenty other inmates when "a woman walked in and she was waving [the detainer acknowledgement form] around that said sex offender and the age of 13[.]" The woman said Shriver's name out loud two or three times. Shriver "literally just panicked" because the other inmates "would tear [him] apart if they found out" he was accused of sexually assaulting a child. Shriver went to the back of the room with the woman "to get some privacy[.]" He signed the form and gave it back to the woman. He testified the form was only in front of him for a few seconds, he did not know what it was, and he did not understand it. He testified the "X" over

the checkbox portion of the form was not present when he signed it. He further testified he was not given a copy of the form to keep in his personal property.

¶6 Shriver testified he did not receive any further communication about the pending sexual assault charge until 2012, when a social worker asked him whether it had been addressed. Shriver asserted he would have requested a prompt disposition had he known about the pending charge and his right to request a prompt disposition when he signed the detainer acknowledgment form.

¶7 The circuit court concluded the State had failed to show that Shriver was "properly advised of his rights under the [IAD]." Nevertheless, the court denied Shriver's motion, concluding Shriver had not shown he was prejudiced by the improper notice. Shriver subsequently filed a motion for reconsideration, which the court denied. The case proceeded to trial, and a jury convicted Shriver of the charged offense. Shriver now appeals.

DISCUSSION

¶8 The resolution of this appeal requires us to interpret the IAD, WIS. STAT. § 976.05.[2] This is a question of law that we review independently. ***State v.***

[2] As a threshold matter, the State asserts it is "unclear whether the IAD should apply to [Shriver]." Because Shriver was serving a Wisconsin sentence and was in the custody of the Wisconsin Department of Corrections (DOC) when the detainer in this case was filed, the State suggests WIS. STAT. § 971.11, which governs *intrastate* detainers, may actually control. The State observes the detainer acknowledgement form Shriver signed refers to § 971.11 in the upper left corner. However, for purposes of this appeal, the State "assume[s] without conceding" that the IAD applies.

In the circuit court, the parties and the court proceeded as though the IAD applied, and they did not address WIS. STAT. § 971.11. In light of these facts, and the State's position on appeal, we assume without deciding that the IAD applies.

(continued)

Blackburn, 214 Wis. 2d 372, 378, 571 N.W.2d 695 (Ct. App. 1997). Our goal in statutory interpretation is to determine and carry out the intent of the legislature. ***Id.*** When the legislature's intent is clear from the language of the statute, we simply apply the statute as written. ***State ex rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. However, the IAD is a remedial statute, and we therefore construe it liberally in favor of a prisoner. ***State v. Tarrant***, 2009 WI App 121, ¶7, 321 Wis. 2d 69, 772 N.W.2d 750 (citing 2 MICHAEL B. MUSHLIN, RIGHTS OF PRISONERS § 10.21, at 384 (3d ed. 2002)).

¶9 On appeal, Shriver argues the circuit court should have granted his motion to dismiss because the State's handling of the detainer violated the IAD in three ways: (1) the detainer was issued by the incorrect authority; (2) prison officials failed to give Shriver proper notice of the detainer; and (3) the State failed to accept custody of Shriver and timely bring him to trial. We address and reject Shriver's arguments in turn.

I. Issuance of the detainer by the incorrect authority

¶10 Shriver first argues the State violated the IAD because the detainer was issued by the DOC instead of the Outagamie County district attorney. In ***State ex rel. Garner v. Gray***, 59 Wis. 2d 323, 332, 208 N.W.2d 161 (1973), our supreme court observed that the IAD does not specify the appropriate authority to lodge a detainer against a prisoner. However, the court interpreted the IAD to require that a detainer be issued by "the prosecuting officer of the county wherein

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The current version of the IAD is identical to the version that was in effect when the detainer was lodged against Shriver in 2002. All references to the Wisconsin Statutes are therefore to the 2011-12 version.

outstanding complaints, warrants or indictments exist[.]" ***Id.*** Shriver is therefore correct that, in this case, the detainer should have been issued by the Outagamie County district attorney instead of the DOC.

¶11 Nevertheless, we conclude for three reasons that Shriver is not entitled to relief on this basis. First, Shriver did not argue in the circuit court that the detainer was lodged by the incorrect authority. We generally refuse to address issues raised for the first time on appeal. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727.

¶12 Second, the mere fact that the detainer was lodged by the incorrect authority does not automatically entitle Shriver to relief. In ***Garner***, the state of Illinois placed a detainer on an inmate in a Wisconsin prison. ***Garner***, 59 Wis. 2d at 325. The detainer was incorrectly issued by the Chicago police department instead of the Cook County district attorney. ***Id.*** at 332. The inmate sought a writ of mandamus commanding the warden of the Wisconsin prison to refrain from recognizing the detainer. ***Id.*** at 325. Our supreme court rejected the inmate's claim, reasoning the error was merely "procedural" and "did not prejudice any of [the] petitioner's fundamental rights[.]" ***Id.*** at 333. As a result, the error was "not fatal to the efforts by the Illinois authorities to obtain the return of [the] petitioner." ***Id.***

¶13 Here, Shriver has failed to establish he suffered any prejudice because the DOC lodged the detainer instead of the Outagamie County district attorney. In his brief-in-chief, Shriver merely asserts, without further elaboration, that it is "clear this procedural error combined with the other procedural errors did prejudice [Shriver's] fundamental rights[.]" Shriver fails to develop this argument by explaining how, specifically, the DOC's issuance of the detainer prejudiced

him. We need not address undeveloped arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).[3]

¶14 Third, even if Shriver could establish that the DOC's issuance of the detainer prejudiced him, dismissal would not be an appropriate remedy for the violation where Shriver received notice of the detainer. The plain language of the IAD permits dismissal of charges in only three specific circumstances: (1) when a prisoner requests final disposition under Article III and a trial is not held within 180 days, *see* WIS. STAT. § 976.05(3)(d); (2) when the receiving state requests temporary custody of a prisoner under Article IV and a trial is not held within 120 days of the prisoner's arrival, *see* WIS. STAT. § 976.05(4)(e); and (3) when the appropriate receiving authority refuses or fails to accept temporary custody of a prisoner, *see* WIS. STAT. § 976.05(5)(c). ***State v. Townsend***, 2006 WI App 177, ¶12, 295 Wis. 2d 844, 722 N.W.2d 753. That the IAD expressly permits dismissal as a remedy in only these three situations shows the legislature did not intend dismissal to be an available remedy for other violations, particularly where the prisoner received notice of the detainer. *See* ***FAS, LLC v. Town of Bass Lake***, 2007 WI 73, ¶27, 301 Wis. 2d 321, 733 N.W.2d 287 ("Under the doctrine of *expressio unius est exclusio alterius*, 'the express mention of one matter excludes other similar matters [that are] not mentioned.'" (quoted source omitted)).

[3] In his reply brief, Shriver argues the DOC's issuance of the detainer prejudiced him because "[i]f the detainer had been filed by the district attorney[,] there is a greater possibility that the IAD would have been complied with, as the district attorney's office is more knowledgeable of the law." (Some capitalization omitted.) This undeveloped assertion, first made in Shriver's reply brief, is speculative at best and does not convince us Shriver was prejudiced by the DOC's issuance of the detainer.

¶15 In his reply brief, Shriver concedes that the IAD expressly permits dismissal in only three circumstances, which do not include issuance of the detainer by the incorrect authority. However, in light of the IAD's purpose, he argues it is "ludicrous to believe that the legislature did not intend to allow dismissal of pending charges" under other circumstances "when a defendant is clearly prejudiced."

¶16 Shriver provides no legal authority for his position that the IAD implicitly permits dismissal under circumstances not expressly listed in the statute. He cites no legislative history in support of his argument that the legislature must have intended to permit dismissal in other circumstances. Because the language of the IAD is plain and unambiguous, we must apply it as written. *See* ***Kalal***, 271 Wis. 2d 633, ¶46. We may not rewrite an unambiguous statute to create a remedy where the legislature has not provided one. *See* ***Bank of Commerce v. Waukesha Cnty.***, 89 Wis. 2d 715, 724, 279 N.W.2d 237 (1979) (appellate court is "bound to interpret the statutory language and intent as it is written" and "cannot fashion remedies contrary to the express dictates of a statutory enactment"). Consequently, although the DOC issued the detainer instead of the Outagamie County district attorney, Shriver is not entitled to dismissal of the complaint.

II. Failure to give proper notice of the detainer

¶17 Shriver next argues that officials at Whiteville Correctional Facility violated the IAD by failing to give him adequate notice of the detainer. WISCONSIN STAT. § 976.05(3)(c) provides:

> The department, or warden, or other official having custody of the prisoner shall promptly inform the prisoner of the source and contents of any detainer lodged against the prisoner and shall also inform the prisoner of the prisoner's right to make a request for final disposition of the

> indictment, information or complaint on which the detainer is based.

Shriver asserts the notice he received did not satisfy § 976.05(3)(c) because he was not "properly notified of the charges pending against him," was not "given the opportunity to determine whether … he would like the charges promptly disposed of," and was not given a chance to decide whether "he would like to consult an attorney before making a decision."

¶18 We reject Shriver's argument that he received inadequate notice under WIS. STAT. § 976.05(3)(c). Although the burden is on the State to prove that Shriver received adequate notice of the detainer, *see* ***Townsend***, 295 Wis. 2d 844, ¶6, under the facts presented, we conclude the State satisfied its burden. At the hearing on his motion to dismiss, Shriver admitted he signed a detainer acknowledgment form while at Whiteville. The form informed Shriver that he was charged with sexual assault of a child under age thirteen in Outagamie County Case No. 2001CF920 and that a detainer had been lodged against him. It also informed Shriver he could choose to request a prompt disposition of the charge and could consult with an attorney before making that decision. By signing the form, Shriver acknowledged he was aware of those options. Finally, the form allowed Shriver to choose whether to request a prompt disposition of the charge, although Shriver apparently failed to make that choice. While the checkbox portion of the form was apparently crossed out at some point, Shriver clearly testified it was not crossed out when he received the form. Shriver received all the information required by § 976.05(3)(c).

¶19 Shriver nevertheless contends he was not properly notified because he was given the form and asked to sign it "in a situation where the content of the pending charges being heard by others caused him a great deal of distress."

Shriver therefore asserts he "quickly signed the form without being informed of his rights." He contends he did not understand the form, and he suggests prison officials had an obligation to explain it to him.

¶20 We first note that we view with skepticism Shriver's claim that he knew nothing of the content of the detainer form he signed, yet he recalls with great detail the circumstances in which he signed it. Nonetheless, we reject Shriver's argument because the undisputed evidence shows he received the detainer acknowledgment form, which provided all the information required by WIS. STAT. § 976.05(3)(c). Shriver does not cite any legal authority supporting his argument that prison officials had any obligation beyond giving him the form. Regardless of whether Shriver was under stress at the time, the notice he received complied with the IAD. Further, while Shriver complains that no one explained the detainer acknowledgment form to him, nothing in the statute requires that prison staff provide an explanation. Shriver never testified he asked for assistance, told staff he did not understand the form, or asked to review the form later or under other circumstances. On these facts, we conclude there was no violation of § 976.05(3)(c).

III. Failure to accept custody of Shriver and timely bring him to trial

¶21 Last, Shriver argues the State violated the IAD by failing to accept temporary custody of him from Whiteville and bring him to trial "in a timely manner." Again, we observe that Shriver failed to raise this argument in the circuit court. We could reject the argument on this basis alone. *See* ***Huebner***, 235 Wis. 2d 486, ¶10.

¶22 Shriver's argument also fails on the merits. A receiving state's obligation to accept temporary custody of a prisoner is triggered by either: (1) a

prisoner's request for prompt disposition of pending charges; or (2) a receiving State's request for temporary custody. *See* WIS. STAT. §§ 976.05(3)(a), (4)(a), (5)(a), (5)(c). It is undisputed Shriver never requested prompt disposition, and it is also undisputed the State never requested temporary custody. Consequently, the State had no obligation to accept temporary custody of Shriver.

¶23 In addition, the State did not fail to timely bring Shriver to trial. The IAD requires the State to bring a prisoner to trial within 180 days after the prosecutor receives the prisoner's request for prompt disposition. *See* WIS. STAT. § 976.05(3)(a); ***State v. Thomas***, 2013 WI App 78, ¶¶15-20, 348 Wis. 2d 699, 834 N.W.2d 425. Because Shriver never made a request for prompt disposition, the State was not required to bring him to trial within 180 days. Alternatively, if a receiving state requests temporary custody of a prisoner for resolution of a pending charge, the prisoner must be tried within 120 days after he or she arrives in the receiving state. *See* WIS. STAT. §§ 976.05(4)(a), (4)(c). Again, it is undisputed the State never requested temporary custody of Shriver, so the 120-day time limit does not apply.

¶24 Accordingly, the State did not violate the IAD by failing to accept custody of Shriver and timely bring him to trial. Shriver is therefore not entitled to dismissal of the complaint on this basis.

By the Court.—Judgment affirmed.

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