



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT II

June 9, 2021

To:

Hon. Faye M. Flancher
Circuit Court Judge
Racine County Courthouse
730 Wisconsin Ave.
Racine, WI 53403

Christine A. Remington
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Megan Sanders-Drazen
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Patricia J. Hanson
District Attorney
730 Wisconsin Ave.
Racine, WI 53403

You are hereby notified that the Court has entered the following opinion and order:

2019AP526-CR

State of Wisconsin v. Nickolas S. Sandifer (L.C. #2016CF1100)

Before Reilly, P.J., Gundrum and Davis, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Nickolas S. Sandifer appeals from a judgment of the circuit court dismissing a criminal complaint without prejudice. Upon reviewing the briefs and the record, we conclude at conference this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-

18).¹ For the reasons that follow, we reverse and remand with directions to enter a judgment dismissing the complaint with prejudice.

Racine County filed a complaint charging Sandifer with six felony counts along with an arrest warrant requesting extradition because Sandifer was in custody in an adjacent state. On March 10, 2017, Sandifer, who was in custody in Michigan, demanded speedy disposition by filing forms pursuant to the Interstate Agreement on Detainers (IAD). Sandifer's request was received by the Racine County District Attorney's Office on March 20, 2017.

Sandifer first appeared in a Racine County court for his initial appearance on January 5, 2018. At this point, 291 days had passed since the district attorney's office received Sandifer's IAD paperwork. Sandifer's counsel filed a motion to dismiss on grounds that the State failed to bring him to trial within 180 days as required by the IAD.²

The circuit court held a hearing on Sandifer's motion and dismissed the complaint *without* prejudice:

The Court has read the law and has also familiarized itself with cases *State v. Lewis*, 277 Wis. 2d 446, a 2004 Court of Appeals case, and *State v. Davis*, 248 Wis. 2d 986, a 2001 Wisconsin Supreme Court case.

It would appear to me based on the case law that the Court would have to dismiss, however, it would be appropriate to dismiss the

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

² Wisconsin has codified the IAD in WIS. STAT. § 976.05.² In pertinent part, the IAD provides that when a prisoner (Sandifer) is imprisoned in a party state (Michigan) and there is a pending complaint against the prisoner in another state “on the basis of which a detainer has been lodged” (Wisconsin), “the prisoner shall be brought to trial within 180 days after the prisoner has ... delivered to the prosecuting officer and the appropriate court ... written notice of the place of his or her imprisonment and his or her request for a final disposition to be made of the ... complaint.” Sec. 976.05(3)(a).

case without prejudice for a number of reasons. First and foremost, the State did attempt to bring Mr. Sandifer to the State of Wisconsin within a month after his request for prompt disposition.

The State, however, was told that Mr. Sandifer had matters in other jurisdictions; specifically Will County, Illinois, and was not available for being transported until that was adjudicated.

When he was ready for transport there was a medical quarantine at the facility which prohibited that, so unfortunately he didn't get here until December of 2017.

That, in combination with all of the other factors at paragraph 29 of the *Davis* case that the Court cited, there's nothing in the motion filed by defense counsel that indicates there was any harm to the defendant. In fact, it appears that these dispositions were requested in a number of different jurisdictions.

So based on all of that, following the case law, the case is dismissed, but it is specifically dismissed without prejudice. I'm assuming the State can get a new complaint filed today.

On appeal, Sandifer argues that under the plain language of the IAD, the circuit court was required to dismiss his case with prejudice. *See* WIS. STAT. § 976.05(5)(c) (once a speedy disposition demand is made under the IAD, the receiving state must take custody of and bring the defendant to trial within 180 days or the court where the “complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any effect”). Sandifer further points out that in dismissing his charges without prejudice, the circuit court incorrectly relied on *State v. Davis* and *State v. Lewis*,³ both of which analyze the *Intrastate Detainer Act*, a separate statutory scheme.

The State admits that Sandifer complied with the IAD's procedures, that Wisconsin failed to take custody of him within 180 days, and that the circuit court erroneously relied on *Davis* and *Lewis* in ordering a dismissal without prejudice under the IAD. However, the State does not concede reversible error. Instead, for the first time, the State argues that the tolling provision of the IAD applies and asks this court to find that the 180-day deadline was tolled because Sandifer was "unable to stand trial" for a period of the time in question, as set forth in WIS. STAT. § 976.05(6)(a). We are not persuaded.

First, the State forfeited its tolling argument, which was made for the first time on appeal. *State v. Hayes*, 2004 WI 80, ¶¶20-21, 273 Wis. 2d 1, 681 N.W.2d 203 (citing *State v. Huebner*, 2000 WI 59, ¶¶10-12, 235 Wis. 2d 486, 611 N.W.2d 727). The State never cited to the IAD's tolling provisions in the circuit court. As such, that court did not make factual findings about which specific periods were properly tolled under WIS. STAT. § 976.05(6)(a).

Second, the tolling provisions in the IAD do not justify the circuit court's order to dismiss without prejudice.⁴ Even if certain periods of time between March 20, 2017, and January 5, 2018, could have qualified to toll the deadline, the proper remedy would have been to deny the motion to dismiss and to order Sandifer tried within the remainder of the 180-day period. We

³ *State v. Davis*, 2001 WI 136, 248 Wis. 2d 986, 637 N.W.2d 62; *State v. Lewis*, 2004 WI App 211, 277 Wis. 2d 446, 690 N.W.2d 668. In *Davis*, the Wisconsin Supreme Court held that the plain language of the *Intrastate Detainer Act*, codified at WIS. STAT. § 971.11, allowed for dismissal with or without prejudice. *Davis*, 248 Wis. 2d 986, ¶27 (emphasis added). In reaching this conclusion, the *Davis* court addressed the IAD at issue in the present case and stated: "The phrase 'with prejudice' in the *Interstate Detainer Act* was clearly intended to ensure that dismissals under that act were with prejudice." *Id.*, ¶¶23-24 (emphasis in original).

⁴ For these reasons, the State's tolling argument is not an alternative rationale on which we might affirm the circuit court's judgment, see *State v. Holt*, 128 Wis. 2d 110, 124-25, 382 N.W.2d 679 (Ct. App. 1985), and the State did not file a cross-appeal from the trial court's dismissal order.

agree with Sandifer that the plain language of the IAD does not provide the circuit court with discretion to choose between dismissal with or without prejudice. Therefore, we reverse and remand with directions to the circuit court to enter a judgment dismissing the complaint with prejudice.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily reversed and remanded with directions pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals