SUPREME COURT OF NEW JERSEY

A-9 September Term 2022

086950

State of New Jersey,

Plaintiff-Respondent,

v.

Rami A. Amer,

Defendant-Appellant.

On certification to the Superior Court, Appellate Division, whose opinion is reported at 471 N.J. Super. 331 (App. Div. 2022).

Argued	Decided
March 14, 2023	July 3, 2023

Shane D. Avidan, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Alison Perrone, Deputy Public Defender, Scott Welfel, Assistant Deputy Public Defender, and Shane D. Avidan, Harris Fischman, and Alexander E. Jones, Designated Counsel, admitted pursuant to Rule 1:21-3(c), on the briefs).

Michael C. Mellon, Special Deputy Attorney General/ Acting Assistant Prosecutor, argued the cause for respondent (Christine A. Hoffman, Acting Gloucester County Prosecutor, attorney; Michael C. Mellon, of counsel and on the briefs, and Dana R. Anton, Special Deputy Attorney General/Acting Senior Assistant Prosecutor, on the briefs).

James A. Plaisted argued the cause for amicus curiae Association of Criminal Defense Lawyers of New Jersey (Pashman Stein Walder Hayden, attorneys; James A. Plaisted and Joshua P. Law, on the brief).

Jennifer E. Kmieciak, Deputy Attorney General, argued the cause for amicus curiae Attorney General of New Jersey (Matthew J. Platkin, Attorney General, attorney; Jennifer E. Kmieciak, of counsel and on the brief).

JUSTICE PATTERSON delivered the opinion of the Court.

The Interstate Agreement on Detainers (IAD), codified in New Jersey as N.J.S.A. 2A:159A-1 to -15, is a congressionally sanctioned interstate compact addressing the transfer of a prisoner from the jurisdiction in which he is incarcerated to another jurisdiction in which he faces criminal charges. When a jurisdiction in which the prisoner is subject to an "untried indictment, information or complaint" imposes a detainer against him, and the prisoner gives notice that he requests a transfer to that jurisdiction for a final disposition of his charges there, he must be "brought to trial within 180 days" of the receiving jurisdiction's receipt of that notice. N.J.S.A. 2A:159A-3(a).

That 180-day deadline for trial, however, may be extended in accordance with the compact's provisions. Pursuant to N.J.S.A. 2A:159A-6(a), that time period "shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter." In

addition, the court with jurisdiction over the prisoner "may grant any necessary or reasonable continuance" for good cause, subject to conditions prescribed by the IAD. N.J.S.A. 2A:159A-3(a).

In this appeal, defendant Rami A. Amer requested to be transferred from a Pennsylvania correctional facility to New Jersey pursuant to the IAD to face criminal charges, thus commencing the 180-day period prescribed by N.J.S.A. 2A:159A-3(a). After his transfer, defendant filed two pretrial suppression motions, which remained pending for fifty-three days before they were denied. The trial court conducted jury selection 150 days after defendant's notice under the IAD, but the jury was not sworn and the evidence was not presented until several weeks later.

Following jury selection but before the jury was sworn, defendant moved to dismiss his indictment on the ground that the trial court violated his speedy trial rights under the IAD. He argued that he was not brought to trial within the IAD-mandated 180 days of his request for transfer and that there was no basis to toll the IAD's speedy trial requirements.

The trial court denied defendant's motion to dismiss. The court held that during the fifty-three days when defendant's suppression motions were pending, he was "unable to stand trial" within the meaning of N.J.S.A. 2A:159A-6(a), and the IAD's 180-day time period for defendant to be

"brought to trial" was therefore tolled. The trial court also ruled that defendant was "brought to trial" when jury selection began within the 180-day period set by N.J.S.A. 2A:159A-3(a), and that his rights under the IAD were not violated. Defendant was tried before a jury and was convicted of four offenses, and he appealed his conviction and sentence.

The Appellate Division affirmed defendant's conviction but remanded the matter to the trial court for resentencing. State v. Amer, 471 N.J. Super. 331, 359 (App. Div. 2022). The appellate court held that in a colloquy with the trial judge during jury selection, defense counsel waived defendant's right to be brought to trial within 180 days of his notice pursuant to the IAD. It further concluded that defendant was "unable to stand trial" for purposes of N.J.S.A. 2A:159A-6(a) while his pretrial motions were pending; that N.J.S.A. 2A:159A-3(a)'s 180-day period for the commencement of trial was tolled during that period; and that the trial court had properly granted a continuance extending the deadline imposed by N.J.S.A. 2A:159A-3. Id. at 354.

We granted defendant's petition for certification, and we affirm as modified the Appellate Division's judgment. We do not concur with the Appellate Division that defense counsel waived defendant's rights under the IAD. We agree with the appellate court, however, that the IAD's 180-day time period was tolled during the pendency of defendant's pretrial motions, and that

defendant was "brought to trial" when jury selection began prior to the deadline set by N.J.S.A. 2A:159A-3(a). We therefore conclude that the trial court did not violate defendant's speedy trial rights under the IAD, and that the court properly denied defendant's motion to dismiss his indictment.

I.

A.

On November 21, 2016, defendant was arrested in Mantua Township in connection with seventeen burglaries committed over nine days in four Gloucester County municipalities. He was released from custody on December 12, 2016.

On December 24, 2016, defendant was arrested in Philadelphia in connection with a series of burglaries committed in Philadelphia County, Pennsylvania. On January 11, 2017 and January 23, 2017, defendant was charged in the Court of Common Pleas of Philadelphia County with seventeen counts of burglary, criminal trespass, criminal mischief, and other offenses.

In indictments returned on March 29, 2017 and April 26, 2017, a Gloucester County grand jury charged defendant with thirty offenses arising from the November 2016 burglaries. In a superseding indictment, defendant was charged with seventeen counts of third-degree burglary, five counts of third-degree theft, two counts of fourth-degree theft, two counts of fourth-

degree attempted theft, and eleven counts of fourth-degree criminal mischief. Pursuant to N.J.S.A. 2A:159A-3(a), the Gloucester County Prosecutor's Office filed a detainer with Pennsylvania authorities on March 29, 2017.

On October 6, 2017, defendant pled guilty to the charges pending against him in Pennsylvania. He was sentenced to serve between fifty-four months and ten years in prison and was incarcerated in a Pennsylvania state corrections facility.

On February 23, 2018, the State received defendant's notice under N.J.S.A. 2A:159A-3(a), in which he requested the prompt disposition of his New Jersey charges pursuant to the IAD. Defendant was transported from Pennsylvania to New Jersey the same day.

B.

By virtue of the State's receipt of defendant's notice under the IAD on February 23, 2018, the 180-day period set forth in N.J.S.A. 2A:159A-3(a) began to run. As the trial court acknowledged, at that point in time the IAD would have required that defendant be "brought to trial" no later than August 22, 2018.

On May 21, 2018, defendant filed two motions to suppress, one seeking suppression of evidence found in defendant's vehicle after his arrest on November 21, 2016, and the other seeking suppression of defendant's

statement to police on the same date, based on an alleged violation of his rights under Miranda v. Arizona, 384 U.S. 436 (1966). By order and opinion dated July 13, 2018, -- fifty-three days after defendant filed the motions to suppress -- the trial court denied both motions.

To "make preliminary determinations in this case so that jury selection and trial may proceed in the most expeditious manner," the trial court conducted a pretrial conference on July 23, 2018. The court ordered that jury selection would commence the following day.

During jury selection on July 24, 2018, the trial judge informed counsel that proceedings would continue the next day and that counsel should plan to be in court on July 31, 2018. Anticipating a break in the trial because of the trial judge's obligations in pretrial detention matters and his planned vacation in August, as well as defense counsel's vacation scheduled for early September, the court notified counsel that after July 31, the trial would resume on September 13, 2018. Neither party objected to that proposed schedule.

However, when jury selection resumed the next day, defense counsel stated that the IAD required the trial to begin on August 22, 2018, and argued that defendant's rights under the IAD would be violated if, for example, the court began a trial but "put it off [for] six months." The State took the position

that the trial had already commenced and that the IAD's deadline had been tolled during the pendency of defendant's suppression motions.

The court ruled that the trial had commenced for IAD purposes on the first day of jury selection, July 24, 2018, but acknowledged that defense counsel had preserved defendant's right to assert his speedy trial rights under the IAD.

Later in the day on July 25, 2018, the prosecutor asked the trial judge whether the State should be prepared to present witnesses "next Tuesday," referring to Tuesday, July 31, 2018. The trial judge commented that if he were the attorney trying the case, he "would say let's get the jury picked and then we'll start openings when we return." The court asked counsel to state their views on the schedule, and the following exchange between the trial judge and defense counsel took place:

> DEFENSE COUNSEL: I'm concerned about time, but what happens is there's no way that this trial finishes on Tuesday --
>
> THE COURT: No.
>
> DEFENSE COUNSEL: -- at this point, I do concede.
>
> THE COURT: Right. I think it's best that we do that. I just think -- I think what that will also help is prevent, hopefully, a lot of questions about the testimony that came in that, you know, on Tuesday, you know?

THE STATE: And then --

DEFENSE COUNSEL: And that would extend proceedings.

The trial court then entered an order stating that trial had commenced for IAD purposes on July 24, 2018, when jury selection began, and that the IAD's 180-day time period had been tolled between May 31, 2018, when defendant filed his suppression motions, and July 13, 2018, when those motions were resolved.

On July 31, 2018, the parties completed jury selection. The trial did not resume in August 2018.

In an August 28, 2018 letter, characterized as a motion to dismiss all charges and submitted pro se, defendant contended that the trial court had violated his right under the IAD to a trial -- which, he claimed, included a final disposition of the case -- by August 22, 2018. The trial court treated defendant's letter as a motion to dismiss his indictment.

In a written opinion and order, the trial court denied defendant's motion to dismiss. The court reasoned that defendant was "unable to stand trial" under N.J.S.A. 2A:159A-6(a) during the period between the filing and the disposition of his motions to suppress, and that those motions postponed the IAD's 180-day deadline from August 22 to October 14, 2018. The court also

held that it had the authority to grant a continuance, on a showing of good cause, thus expanding the 180-day period set forth in the IAD. The trial court further held that trial had commenced for IAD purposes at the start of jury selection on July 24, 2018, and that the court had accordingly met its obligations under the IAD.

When the trial resumed on September 13, 2018, defendant reserved the right to reopen the issue whether his rights under the IAD had been violated.

On October 4, 2018, the jury convicted defendant of third-degree burglary, third-degree theft by unlawful taking, fourth-degree criminal mischief, and fourth-degree attempted theft by unlawful taking. The jury acquitted defendant of the remaining charges. Defendant was sentenced to an aggregate sixteen-year term of incarceration, to run consecutively to the term of incarceration that he was serving for his Pennsylvania offenses.

C.

Defendant appealed his conviction and sentence. In his appeal, defendant challenged the trial court's ruling that his rights under the IAD were not violated by virtue of the timing of his trial.[1]

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[1] The other issues that defendant raised before the Appellate Division -- the adequacy of the evidence presented to the jury, the trial court's denial of his motion to suppress evidence found in his vehicle, the admissibility of lay opinion testimony by a police officer, and the propriety of his sentence -- are not before the Court in this appeal.

The Appellate Division affirmed defendant's convictions, vacated his sentence, and remanded for resentencing. Amer, 471 N.J. Super. at 359. The appellate court determined that the trial judge "properly denied defendant's motion to dismiss based on an IAD violation." Id. at 353. The court observed that N.J.S.A. 2A:159A-3(a)'s requirement that a prisoner transferred at his own request be brought to trial within 180 days is not absolute. It noted that the 180-day time period may be extended by a grant of a continuance on a showing of good cause, tolled because the prisoner subject to detainer is "unable to stand trial" for a portion of that period under N.J.S.A. 2A:159A-6(a), or nullified by the defendant's waiver of his rights under the IAD. Id. at 351-53.

The Appellate Division premised its determination on three separate grounds. First, the appellate court found that defendant waived his rights under the IAD "when his attorney conceded during jury selection on July 25, 2018 that the State should not be required to present witnesses to testify on the next scheduled court day of July 31." Id. at 353.

Second, the Appellate Division concurred with the trial court that "the period between the filing of defendant's suppression motions and their resolution several weeks later tolled the time under the IAD for defendant to be brought to trial." Id. at 354. Interpreting the IAD in conjunction with the

time-exclusion provisions of the federal Speedy Trial Act, 18 U.S.C. § 3161, the Appellate Division viewed N.J.S.A. 2A:159A-6(a)'s extension of the IAD's 180-day deadline if the defendant is "unable to stand trial" to "'include those periods of delays caused by the defendant's own actions.'" Id. at 352 (quoting United States v. Peterson, 945 F.3d 144, 154 (4th Cir. 2019)).

Third, the Appellate Division acknowledged a trial court's authority to grant a continuance under the IAD for good cause and suggested that defendant's suppression motions constituted good cause for a continuance. Id. at 354. It declined to find an abuse of discretion in the trial court's extension of the 180-day period based on the filing of those motions. Ibid.[2]

The Appellate Division therefore concluded that defendant was brought to trial in accordance with the IAD. See id. at 350-53.

D.

We granted defendant's petition for certification, in which he challenged the Appellate Division's decision with respect to the IAD issue. 252 N.J. 89 (2022). We also granted the applications of the Association of Criminal Defense Lawyers of New Jersey (ACDL) and the Attorney General to participate in this appeal as amici curiae.

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[2] The Appellate Division did not reach defendant's contention that he was not "brought to trial" for purposes of N.J.S.A. 2A:159A-3(a) until September 13, 2018, when the jury was sworn and jeopardy attached.

II.

A.

Defendant contends that the Appellate Division erred when it concluded that defense counsel waived defendant's right to be brought to trial within the IAD's time constraints. He argues that only a physical or mental disability renders a defendant "unable to stand trial" under N.J.S.A. 2A:159A-6(a), and that his motions to suppress did not toll the IAD's 180-day period during which the court was required to bring him to trial. Defendant contends that the trial court did not grant a continuance in accordance with the procedural requirements of N.J.S.A. 2A:159A-3(a).

B.

The State counters that, by filing his suppression motions and by virtue of his counsel's comments about the schedule for the presentation of trial evidence, defendant implicitly agreed to the trial schedule set by the court. It contends that a defendant is "unable to stand trial" under N.J.S.A. 2A:159A-6(a) while his dispositive motions are pending before the trial court and that defendant's suppression motions therefore tolled the 180-day time period. The State argues that the trial court's finding of good cause for a continuance comported with the spirit of the IAD.

C.

Amicus curiae ACDL contends that defendant did not voluntarily waive his right to a trial within the time limitations set forth in the IAD. It asserts that defendant's suppression motions did not toll the 180-day period set forth in the statute, that the trial court did not grant a continuance on a showing of good cause, and that defendant's trial did not commence under the IAD until the jury was sworn on September 13, 2018.

D.

Amicus curiae the Attorney General argues that the trial court properly found that defendant was "unable to stand trial" under N.J.S.A. 2A:159A-6(a) while the court considered his motions to suppress and that defendant was "brought to trial" under 2A:159A-3(a) when jury selection commenced on July 24, 2018.

III.

A.

The IAD "is a congressionally sanctioned interstate compact within the Compact Clause, U.S. Const. Art. I, § 10, cl. 3." Carchman v. Nash, 473 U.S. 716, 719 (1985). It is a compact among the federal government, forty-eight states, the District of Columbia, Puerto Rico, and the United States Virgin

Islands. Ibid. The IAD was adopted in New Jersey in 1958 and is codified as N.J.S.A. 2A:159A-1 to -15. See L. 1958, c. 12.

The IAD was "drafted in response to a variety of problems arising out of the then unregulated system of detainers commonly used where one or more jurisdictions had charges outstanding against a prisoner held by another jurisdiction." United States v. Ford, 550 F.2d 732, 737 (2d Cir. 1977). As the Legislature found when it codified the IAD in New Jersey, "charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation." N.J.S.A. 2A:159A-1. The IAD reflects each party jurisdiction's policy "to encourage the expeditious and orderly disposition of [outstanding] charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints." Ibid.

Two provisions of the IAD are central to our analysis. The first is Article III of the IAD, codified as N.J.S.A. 2A:159A-3. That provision "gives a prisoner incarcerated in one State the right to demand the speedy disposition of 'any untried indictment, information or complaint' that is the basis of a detainer lodged against him by another State." Carchman, 473 U.S. at 718-

19.[3] To that end, the IAD requires "[t]he warden, commissioner of corrections or other official having custody of" a prisoner to inform him about "any detainer lodged against him" and notify him of "his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based." N.J.S.A. 2A:159A-3(c). The compact also prescribes the method by which a prisoner provides to that official "written notice and request for final disposition," and requires the official to promptly forward the notice "to the appropriate prosecuting official and court by registered or certified mail, return receipt requested." Id. at (b).

Article III of the IAD requires that a prisoner

> be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint.

[3] Article IV of the IAD prescribes a separate procedure by which "the appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending" may request that "a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State" be transferred to that jurisdiction's temporary custody for trial. See N.J.S.A. 2A:159A-4(a). Under that provision for prosecutor-initiated transfer, the time period in which the prisoner must be brought to trial is 120 days, not 180 days as in Article III. Id. at (c).

[Id. at (a).][4]

The IAD does not specify what it means to be "brought to trial" for purposes of that provision.

"[I]n the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV" of the IAD, "the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect." N.J.S.A. 2A:159A-5(c).

The court exercising jurisdiction over the matter, however, "may grant any necessary or reasonable continuance" based on "good cause shown in open court, the prisoner or his counsel being present." N.J.S.A. 2A:159A-3(a). Moreover, in certain circumstances, a defendant may be held to have waived his right to a speedy trial under the IAD by virtue of his counsel's consent to a trial date later than the date on which the 180-day time period expires. New

[4] The 180-day period begins to run on the date that the written notice is delivered to the prosecutor in the receiving state, not the date on which the prisoner begins the process by requesting that an official of the jurisdiction in which he is in custody transmit the notice to the prosecutor. See Fex v. Michigan, 507 U.S. 43, 49 (1993) (noting that "delivery is the key concept"); accord State v. Pero, 370 N.J. Super. 203, 215 (App. Div. 2004).

York v. Hill, 528 U.S. 110, 112-18 (2000); see also State v. Buhl, 269 N.J. Super. 344, 357 (App. Div. 1994) (holding that a defendant who requested an adjournment of his trial until after the expiration of N.J.S.A. 2A:159A-3(a)'s 180-day period "waived his right to have the trial commence within 180 days of his request for final disposition of the pending charges").

The second IAD provision governing this appeal is Article VI, codified as N.J.S.A. 2A:159A-6. It states that "[i]n determining the duration and expiration dates" for purposes of Articles III and IV, "the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter." N.J.S.A. 2A:159A-6(a). Article VI further provides that no IAD provision or remedy made available by the compact "shall apply to any person who is adjudged to be mentally ill." Id. at (b).

The IAD "is a federal law subject to federal construction," Carchman, 473 U.S. at 719, and the interpretation of its terms "presents a question of federal law," State v. Pero, 370 N.J. Super. 203, 214 (App. Div. 2004) (quoting Cuyler v. Adams, 449 U.S. 433, 442 (1981)). Accordingly, we look to decisions of the United States Supreme Court and federal courts for guidance in interpreting the IAD. Ibid.

B.

We first consider the Appellate Division's holding that defense counsel waived defendant's rights under the IAD by virtue of his comments to the court about trial scheduling on July 25, 2018. See Amer, 471 N.J. Super. at 353.

In Hill, the United States Supreme Court observed that "no provision of the IAD prescribes the effect of a defendant's assent to delay on the applicable time limits." 528 U.S. at 114. The Court stated, however, that in accordance with general principles of waiver in criminal cases, "courts have agreed that a defendant may, at least under some circumstances, waive his right to object to a given delay under the IAD, although they have disagreed on what is necessary to effect a waiver." Ibid. The Supreme Court held in Hill that the defendant waived his speedy trial rights under the IAD when he agreed to a trial date after the conclusion of the 180-day period for a defendant to be brought to trial under Article III. Id. at 113-18; see also State v. Miller, 277 N.J. Super. 122, 128-30 (App. Div. 1994) (holding that a defendant who pled guilty and then requested, pending sentencing, a transfer back to the jurisdiction from which he had been transferred had waived his rights under the IAD by making the request to return to the original jurisdiction).

Here, the Appellate Division found a "waiver in open court" based on what the appellate court viewed to be defense counsel's concession on July 25, 2018, that the State should not be required to present witnesses on the next trial date, July 31, 2018, in order to avoid questions from the jury about any testimony presented on that date when the trial resumed in September 2018. Amer, 471 N.J. Super. at 353-54. As the trial transcript reflects, however, it was the trial judge, not defense counsel, who expressed a preference for delaying the State's presentation of testimony until trial resumed in September, given the potential for juror questions about such testimony when the trial resumed after a long delay. Defense counsel conceded only that the trial could not be completed on July 31, 2018 -- nothing more. As he had in the course of pretrial proceedings, defense counsel consistently asserted defendant's rights under the IAD during trial.

Accordingly, we respectfully disagree with the Appellate Division's view that defense counsel waived defendant's rights under the IAD. Defendant's argument that the trial court violated his speedy trial rights under the IAD was therefore preserved for appeal.

C.

We next review the Appellate Division's holding that the 180-day period prescribed by the IAD's Article III(a) was tolled while defendant's motions to

suppress were pending before the trial court, because defendant was "unable to stand trial" under IAD Article VI(a) during that period. See id. at 354. We consider whether Congress intended the term "unable to stand trial" in Article VI(a) to denote only prisoners whose physical or mental condition renders them unable to stand trial, or whether it envisioned that the term would apply to a broader range of settings.

In that inquiry, we apply familiar principles of statutory construction. Our "overriding goal" is to determine Congress's intent, and our analysis "thus begins with the language of the statute," affording the statute's words "their ordinary and accustomed meaning." State v. Hudson, 209 N.J. 513, 529 (2012); see also N.J.S.A. 1:1-1. "If a plain-language reading of the statute 'leads to a clear and unambiguous result, then our interpretive process is over. Only if there is ambiguity in the statutory language will we turn to extrinsic evidence.'" State v. Hupka, 203 N.J. 222, 232 (2010) (quoting Richardson v. Bd. of Trs., PFRS, 192 N.J. 189, 195-96 (2007)). We refrain from adding "a qualification that has been omitted from the statute" by its drafters. DiProspero v. Penn, 183 N.J. 477, 493 (2005).

Here, Congress could have expressly stated that the phrase "unable to stand trial" as used in Article VI applies only to circumstances involving a physical or mental incapacity to stand trial. It did not do so. Instead,

Congress chose general language in Article VI(a), without limiting the term "unable to stand trial" to settings involving prisoners with debilitating physical or mental conditions. See N.J.S.A. 2A:159A-6(a). We decline to impose limiting language that appears nowhere in the IAD.

Defendant's argument that nothing short of physical or mental incapacity satisfies the "unable to stand trial" language of N.J.S.A. 2A:159A-6(a) is further undermined by subsection (b) of that statute, which provides that no IAD provision or remedy made available by the interstate compact applies "to any person who is adjudged to be mentally ill." N.J.S.A. 2A:159A-6(b). It simply does not make sense that Congress would limit the "unable to stand trial" language of Article VI(a) to prisoners whose physical or mental conditions render them unable to stand trial, but entirely exclude any prisoner "adjudged to be mentally ill" from the IAD. See ibid. We conclude that the phrase "unable to stand trial" was not intended to be given the narrow construction urged by defendant.

Our plain-language reading of N.J.S.A. 2A:159A-6(a) is underscored by federal appellate case law. The United States Supreme Court has yet to directly address the precise question whether the 180-day time period of

Article III of the IAD is tolled during the pendency of pretrial motions.[5] As the Appellate Division noted in this appeal, however, a clear majority of federal courts of appeals that have considered whether pretrial defense motions render a defendant "unable to stand trial" have answered that question in the affirmative. See Amer, 471 N.J. Super. at 352 n.6.

In Peterson, the Fourth Circuit held that the 120-day time limit prescribed for IAD Article IV's prosecutor-initiated transfer procedure is tolled while the defendant's pretrial motions remain pending. 945 F.3d at 155. The court reasoned that the IAD's "unable to stand trial" language incorporates "'those periods of delays caused by the defendant's own actions,'" and that "a defendant's own actions include 'periods of delay occasioned by . . . motions filed on behalf of [a] defendant.'" Id. at 154-55 (alteration and omission in original) (first quoting United States v. Ellerbe, 372 F.3d 462, 468 (D.C. Cir. 2004); and then quoting United States v. Nesbitt, 852 F.2d 1502, 1516 (7th Cir. 1988)). As the Fourth Circuit observed, such an approach not only harmonizes the IAD with the federal Speedy Trial Act, but "also avoids creating an incentive for defendants to saddle district courts with

[5] In Hill, the Supreme Court observed that it was "uncontested" that the IAD's 180-day time limit had been tolled during the pendency of several motions filed by the defendant. 528 U.S. at 112.

innumerable pretrial motions in hopes of manufacturing delays and waiting out the [IAD]'s 120-day clock." Id. at 155.

Other circuit courts of appeals agree. In Ellerbe, the D.C. Circuit noted that Article VI of the IAD "expressly directs that the period be tolled 'whenever and for as long as the prisoner is unable to stand trial,' 18 U.S.C. app. 2, § 2, art. VI(a), which courts have construed to include those periods of delays caused by the defendant's own actions." 372 F.3d at 468. The Second Circuit reached the same conclusion in United States v. Cephas, noting its previous holding that the IAD excludes "all those periods of delay occasioned by the defendant." 937 F.2d 816, 819 (2d Cir. 1991) (quoting United States v. Roy, 771 F.2d 54, 59 (2d Cir. 1985)). In Nesbitt, the Seventh Circuit held "that both the district court's grant of a continuance . . . as well as the periods of delay occasioned by the multiple motions filed on behalf of the defendant" tolled the running of the time periods set forth in Articles III and IV of the IAD. 852 F.2d at 1516. The Ninth Circuit held in United States v. Johnson that fifteen days of pretrial delay due to the defendant's motions tolled the IAD's time periods, just as it tolled the time periods set forth in the federal Speedy Trial Act. 953 F.2d 1167, 1172 (9th Cir. 1992); see also United States v. Collins, 90 F.3d 1420, 1427 (9th Cir. 1996). The Eighth Circuit similarly held in United States v. Sawyers that pretrial motions tolled the time periods

for the IAD. 963 F.2d 157, 162 (8th Cir. 1992). And in United States v. Walker, the First Circuit held that IAD Article IV's 120-day period was tolled during the pendency of the defendant's motion to suppress and other motions. 924 F.2d 1, 5 (1st Cir. 1991).[6]

Moreover, the courts of several of our sister states concur that a defendant is "unable to stand trial" pursuant to the IAD's Article VI(a) while his pretrial motions are pending. See, e.g., State v. Brown, 953 A.2d 1174, 1181 (N.H. 2008) (holding that reasonable delay during the pendency of a defendant's pretrial motion tolls the IAD's time periods); Diaz v. State, 50 P.3d 166, 167-68 (Nev. 2002) (recognizing that a defendant's motion to dismiss tolls the IAD's time periods); Commonwealth v. Montione, 720 A.2d 738, 741 (Pa. 1998) (finding persuasive "the analysis and interpretation of the courts that held that delay occasioned by the defendant is excludable" from the

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[6] The Fifth and Sixth Circuits have construed the IAD's "unable to stand trial" language more narrowly. In Birdwell v. Skeen, the Fifth Circuit concluded that the phrase "unable to stand trial" in Article VI of the IAD "was consistently and only used by federal courts to refer to a party's physical or mental ability to stand trial throughout the fifteen years prior to Congress' enacting the [IAD] in 1970. We decline to expand that phrase to encompass legal inability due to the filing of motions or requests." 983 F.2d 1332, 1340-41 (5th Cir. 1993) (footnotes omitted). And in Stroble v. Anderson, the Sixth Circuit held that absent a showing that the defendant "was physically or mentally disabled," the district court had erred when it found the defendant "unable to stand trial" under Article VI(a) while his motions were pending. 587 F.2d 830, 838 (6th Cir. 1978).

IAD's time limitations); State v. Batungbacal, 913 P.2d 49, 56 (Haw. 1996) (concurring with the majority of "federal courts that have construed the phrase 'unable to stand trial' as including within the [A]rticle VI tolling provision all those periods of delay occasioned by the defendant, including delays attributable to motions filed on behalf of the defendant").

We find the reasoning adopted by those courts to be compelling. Those federal and state decisions recognize that as a practical matter, a criminal trial ordinarily will not proceed while a pretrial motion is pending. Indeed, our criminal court rule addressing pretrial proceedings provides that "[a] motion made before trial shall be determined before the trial memorandum is prepared and the trial date fixed, unless the court, for good cause, orders it deferred for determination at or after trial." R. 3:10-2(b). A trial court's grant or denial of a pretrial motion to suppress such as the motions at issue here may have a profound -- if not dispositive -- impact on a defendant's prosecution and any plea negotiations. While the defendant awaits disposition of his suppression motions, he is "unable to stand trial" for purposes of N.J.S.A. 2A:159A-6(a).

We do not construe N.J.S.A. 2A:159A-6(a) to indefinitely toll the IAD's speedy trial provisions if a defendant subject to the interstate compact files a pretrial motion, however. Rule 3:25-4(i)(3), a provision of our court rules governing excludable time for speedy trial purposes following the Criminal

Justice Reform Act (CJRA), N.J.S.A. 2A:162-15 to -26, provides that "[t]he time resulting from the filing of a motion by either the prosecution or defendant" is "excluded in computing the time in which a case shall be indicted or tried," subject to the following limitations:

> (A) If briefing, argument, and any evidentiary hearings required to complete the record are not complete within 60 days of the filing of the notice of motion, or within any longer period of time authorized pursuant to R. 3:10-2(f), any additional time shall not be excluded.
>
> (B) Unless the court reserves its decision until the time of trial, if the court does not decide the motion within 30 days after the record is complete, any additional time during which the motion is under advisement by the court shall not be excluded unless the court finds there are extraordinary circumstances affecting the court's ability to decide the motion, in which case no more than an additional 30 days shall be excluded.
>
> (C) If the court reserves its decision on a motion until the time of trial, the time from the reservation to disposition of that motion shall not be excluded. When the court reserves a motion for the time of trial, the court will be obligated to proceed directly to voir dire or to opening statements after the disposition of the motion.
>
> [R. 3:25-4(i)(3)(A) to (C)].

Rule 3:25-4(i)(3) strikes an appropriate balance, in the CJRA context, between a confined defendant's interest in a speedy trial and the need to afford the court sufficient time to develop a thorough record and carefully decide

pretrial motions. We consider the same limitations on tolling of time periods due to the pendency of pretrial motions to be appropriate in an IAD case.

Accordingly, a defendant who has filed a pretrial motion in an IAD case should be considered "unable to stand trial" under N.J.S.A. 2A:159A-6(a) during the pendency of a pretrial motion, with an important caveat: N.J.S.A. 2A:159A-3(a)'s 180-day trial deadline should not be tolled during any portion of the period in which the defendant's motion was pending that would not be considered excludable time for speedy trial purposes under Rule 3:25-4(i)(3).[7] We impose that limitation to ensure that defendants in cases governed by the IAD will not be subjected to inordinate trial delays when they file motions with the trial court.

D.

We briefly address the question whether a defendant is "brought to trial" for purposes of N.J.S.A. 2A:159A-3(a) when jury selection commences, as the State argues and the Appellate Division determined, or when the jury is sworn and jeopardy attaches, as defendant contends.

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[7] As in the speedy trial setting under Rule 3:25-4(i)(3)(B), a finding of "extraordinary circumstances affecting the court's ability to decide the motion" in an IAD case warrants the addition of only 30 days to the time period for a defendant to be brought to trial.

Although the United States Supreme Court and the federal courts of appeals have not yet addressed that question, appellate courts in two of our sister states that are parties to the IAD have concluded that a defendant is "brought to trial" under the IAD when jury selection begins.

In State v. Bjorkman, the New Hampshire Supreme Court rejected the defendant's argument that, because jeopardy does not attach until the jury is empaneled and sworn, a defendant is not "brought to trial" under the IAD until the jury is sworn and the State presents evidence. 199 A.3d 263, 267-69 (N.H. 2018). Citing the Fourth Circuit's interpretation of the federal Speedy Trial Act in United States v. Odom, 674 F.2d 228, 231 (4th Cir. 1982), the New Hampshire Supreme Court reasoned that jury selection is part of the trial process, and that the concerns underlying double jeopardy principles are distinct from the interests addressed by the IAD. Bjorkman, 199 A.3d at 267-69. Addressing the defendant's concern about the prospect of a long delay between jury selection and the presentation of evidence, the New Hampshire Supreme Court stated that "incident to [its] holding is [the] understanding that prosecutors and courts will act in good faith to ensure the speedy progression of all phases of trial," and it noted the State's burden to demonstrate compliance with the IAD. Id. at 269.

In Bowie v. State, the Court of Criminal Appeals of Oklahoma similarly held that "for purposes of the IAD, a trial commences when the jury selection begins," given that "[j]ury selection is an intrinsic part of the trial process." 816 P.2d 1143, 1147 (Okla. Crim. App. 1991).

We find those courts' reasoning to be persuasive. Jury selection is not a pretrial proceeding, but a critical stage of the trial itself. See State v. Singletary, 80 N.J. 55, 62 (1979) ("Jury selection is an integral part of the process to which every criminal defendant is entitled."); accord State v. W.A., 184 N.J. 45, 54 (2005). Federal decisions consistently hold that under the Speedy Trial Act, trial begins with voir dire. See, e.g., United States v. Brown, 819 F.3d 800, 810 (6th Cir. 2016) ("For the purposes of the Speedy Trial Act, trial generally commences when voir dire begins."); Gov't of Virgin Islands v. Duberry, 923 F.2d 317, 320 (3d Cir. 1991) ("While the statute does not define 'commence,' other courts of appeals have held that for Speedy Trial Act calculations, a trial commences when voir dire begins and we will follow that rule."); United States v. Fox, 788 F.2d 905, 908 (2d Cir. 1986) ("Trial normally 'commences' for purposes of the [Speedy Trial] Act with the voir dire of the jury.").

The speedy trial provision of the CJRA explicitly specifies that "a trial is considered to have commenced when the court determines that the parties are

present and directs them to proceed to voir dire or to opening argument, or to the hearing of any motions that had been reserved for the time of trial." N.J.S.A. 2A:162-22(2)(b)(i); accord State v. D.F.W., 468 N.J. Super. 422, 435 (App. Div. 2021).

We do not view the law of double jeopardy to control here; rather, we concur with the New Hampshire Supreme Court's reasoning in Bjorkman that "the protections afforded defendants and the goals achieved by the IAD are distinct from those covered by double jeopardy principles." 199 A.3d at 268. As a general rule, we view a defendant to be "brought to trial" under N.J.S.A. 2A:159A-3(a) when jury selection begins.

That general rule, however, does not authorize trial courts to schedule jury selection far in advance of the trial's remaining stages in an effort to circumvent the IAD. We appreciate that scheduling conflicts or witness availability issues, among other considerations, may prevent a trial court from continuing a trial immediately after a jury is selected, but we caution trial judges to avoid prolonged recesses between voir dire and the presentation of evidence when the IAD's speedy trial provisions apply.

E.

We apply the principles stated above to this appeal.

When defendant provided notice to the State of his request for the disposition of his New Jersey offenses on February 23, 2018, N.J.S.A. 2A:159A-3(a) required that he be "brought to trial" by August 22, 2018. Defendant filed his suppression motions on May 21, 2018. The trial court denied the motions fifty-three days later, on July 13, 2018. During those fifty-three days, defendant was "unable to stand trial" under N.J.S.A. 2A:159A-6(a). Accordingly, the 180-day period prescribed in N.J.S.A. 2A:159A-3(a) was tolled during those fifty-three days, and the final deadline for defendant to be "brought to trial" shifted to October 13, 2018. Defendant was "brought to trial" under N.J.S.A. 2A:159A-3(a) when jury selection began on July 24, 2018. He was convicted on October 4, 2018.

Defendant was thus "brought to trial" well in advance of the deadline set by N.J.S.A. 2A:159A-3(a), as tolled pursuant to N.J.S.A. 2A:159A-6(a).[8] We concur with the Appellate Division that the trial court did not violate defendant's rights under the IAD, and we affirm the Appellate Division's

[8] In light of our ruling, we need not reach the question whether the trial court granted a "necessary or reasonable continuance" based on "good cause shown in open court, the prisoner or his counsel being present." N.J.S.A. 2A:159A-3(a). We remind trial courts, counsel, and parties that any such continuance must be premised on a showing of good cause and must be granted in open court, with the defendant or his counsel present. See ibid.

determination that the court properly denied defendant's motion to dismiss his indictment.

IV.

The judgment of the Appellate Division is affirmed as modified.

CHIEF JUSTICE RABNER; JUSTICES SOLOMON, PIERRE-LOUIS, WAINER APTER, and FASCIALE; and JUDGE SABATINO (temporarily assigned) join in JUSTICE PATTERSON's opinion.

Fex v. Michigan, 507 U.S. 43 (1993)

Argued: December 8, 1992

Decided: February 23, 1993

Annotation

PRIMARY HOLDING

The Interstate Agreement on Detainers' limitations period—which requires that a prisoner of one State who is subject of a detainer lodged by another State must be tried within 180 days "after he shall have caused to be delivered" to latter State a request for final disposition of charges—does not commence until prisoner's request has actually been delivered to appropriate authorities in lodging State.

Syllabus

OCTOBER TERM, 1992

Syllabus

FEX *v.* MICHIGAN

CERTIORARI TO THE SUPREME COURT OF MICHIGAN No. 91-7873. Argued December 8, 1992-Decided February 23,1993

Indiana and Michigan are parties to the Interstate Agreement on Detainers (lAD), Article III(a) of which provides that a prisoner of one party State who is the subject of a detainer lodged by another such State must be brought to trial within 180 days "after he shall have caused to be delivered" to the prosecuting officer and the appropriate court of the latter State a request for final disposition of the charges on which the detainer is based. Petitioner Fex, a prisoner in Indiana, was brought to trial in Michigan 196 days after he gave such a request to Indiana prison authorities and 177 days after the request was received by the Michigan prosecutor. His pretrial motion pursuant to Article V(c) of the lAD, which provides for dismissal with prejudice if trial does not commence within the 180-day period, was denied on the ground that the statutory period did not begin until the Michigan prosecutor received his request. His conviction was set aside by the Michigan Court of Appeals, which held that the 180-day period was triggered by transmittal of his request to the Indiana officials. The State Supreme Court summarily reversed.

Held: It is self-evident that no one can have "caused something to be delivered" unless delivery in fact occurs. The textual possibility still exists, however, that *once delivery has been made,* the 180 days must be computed from the date the prisoner "caused" that delivery. Although the text of Article III(a) is ambiguous in isolation, commonsense indications and the import of related provisions compel the conclusion that the 180-day period does not commence until the prisoner's disposition request has actually been delivered to the court and prosecutor of the jurisdiction that lodged the detainer against him. Delivery is a more likely choice for triggering the time limit than is causation of delivery because the former concept is more readily identifiable as a point in time. Moreover, if delivery is the trigger, the consequence of a warden's delay in forwarding the prisoner's request will merely be postponement of the starting of the 180-day clock, whereas if causation is the trigger, the consequence will be total preclusion of the prosecution, even before the prosecutor knew it had been requested.

Delivery as the critical event is confirmed by the fact that the IAD provides for documentary evidence of the time of receipt (by requiring the request

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44

to be sent "by registered or certified mail, return receipt requested," Article III(b)), but nowhere requires a record of when the request is transmitted to the warden (if that is what constitutes the "causation"). Finally, it is unlikely that if transmittal were the critical event the lAD would be so indifferent as to the manner of transmittal. Article III(b) says only that the request "shall be *given or sent*" (emphasis added). Fex's "fairness" and "higher purpose" arguments are more appropriately addressed to the legislatures of the States that have adopted the lAD. Pp. 47-52.

439 Mich. 117,479 N. W. 2d 625, affirmed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, O'CONNOR, KENNEDY, SOUTER, and THOMAS, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which STEVENS, J., joined, *post*, p. 52.

John B. Payne, Jr., by appointment of the Court, 505 U. S. 1202, argued the cause and filed a brief for petitioner.

Jerrold Schrotenboer argued the cause and filed a brief for respondent.

Richard H. Seamon argued the cause for the United States as amicus curiae urging affirmance. With him on the brief were Solicitor General Starr, Assistant Attorney General Mueller, and Deputy Solicitor General Bryson.

JUSTICE SCALIA delivered the opinion of the Court.

This case arises out of a "detainer," which is a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency, or that the agency be advised when the prisoner's release is imminent. Indiana and Michigan, along with 46 other States, the District of

which the prisoner's release is imminent. Indiana and Michigan, along with 40 other States, the District of Columbia, and the United States, are parties to the Interstate Agreement on Detainers (IAD). See Ind. Code §35-33-10-4 (1988); Mich. Comp Laws § 780.601 (1979); Pub. L. 91-538, 84 Stat. 1397-1403, 18 U. S. C. App. § 2; 11 U. L. A. 213-214 (Supp. 1992) (listing

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45

jurisdictions). Two provisions of that interstate agreement give rise to the present suit: Article III and Article V(c), which are set forth in the margin.1

1 Title 18 U. S. C. App. § 2 contains the full text of the IAD, and we refer to its provisions by their original article numbers, as set forth there. Article III of the IAD provides in relevant part as follows:

"(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided*, That, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

"(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based."

Article V(c) of the IAD provides, in relevant part:

"[I]n the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III ... hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint

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46

On February 29, 1988, petitioner was charged in Jackson County, Michigan, with armed robbery, possession of a firearm during a felony, and assault with intent to murder. At the time, he was held in connection with unrelated offenses at the Westville Correctional Center in Westville, Indiana. The Jackson County Prosecuting Attorney therefore lodged a detainer against him. On September 7, 1988, the Indiana correctional authorities informed petitioner of the detainer, and he gave them his request for final disposition of the Michigan charges. On September 22, the prison authorities mailed petitioner's request; and on September 26, 1988, the Jackson County Prosecuting Attorney and the Jackson County Circuit Court received it. Petitioner's trial on the Michigan charges began on March 22, 1989, 177 days after his request was delivered to the Michigan officials and 196 days after petitioner gave his request to the Indiana prison authorities. 439 Mich. 117, 118, 479 N. W. 2d 625 (1992) (per curiam).

Prior to trial, petitioner moved for dismissal with prejudice pursuant to Article V(c) of the IAD, on the ground that his trial would not begin until after the 180-day time limit set forth in Article III(a). The trial court denied the motion, reasoning that the 180-day time period did not commence until the Michigan prosecutor's office received petitioner's request. App. 36. Petitioner was convicted on all charges except assault with intent to murder, but his conviction was set aside by the Michigan Court of Appeals, which held that "the commencement of the 180-day

statutory period was triggered by [petitioner's] request for final disposition to the [Indiana] prison officials." *Id.*, at 39. The Supreme Court of Michigan summarily reversed. 439 Mich. 117,479 N. W. 2d 625 (1992) (per curiam). We granted certiorari. 504 U. S. 908 (1992).

has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect."

47

The outcome of the present case turns upon the meaning of the phrase, in Article III(a), "within one hundred and eighty days after he shall have caused to be delivered." The issue, specifically, is whether, within the factual context before us, that phrase refers to (1) the time at which petitioner transmitted his notice and request (hereinafter simply "request") to the Indiana correctional authorities; or rather (2) the time at which the Michigan prosecutor and court (hereinafter simply "prosecutor") received that request.

Respondent argues that no one can have "caused something to be delivered" unless delivery in fact occurs. That is self-evidently true,2 and so we must reject petitioner's contention that a prisoner's transmittal of an IAD request to

2 Not, however, to the dissent: "The fact that the rule for marking the start of the 180-day period is written in a fashion that contemplates actual delivery ... does not mean that it cannot apply if the request is never delivered." *Post*, at 55. Of course it vastly understates the matter to say that the provision is "written in a fashion that contemplates actual delivery," as one might say Hamlet was written in a fashion that contemplates 16th-century dress. Causation of delivery is the very condition of this provision's operation-and the dissent says it does not matter whether delivery is caused.

The dissent asserts that "the logical way to express the idea that receipt must be perfected before the provision applies would be to start the clock 180 days 'after he has caused the request *to have been delivered.*'" *Post*, at 53. But that reformulation changes the meaning in two respects that have nothing to do with whether receipt must be perfected: First, by using the perfect indicative ("after he has caused") rather than the future perfect ("after he shall have caused"), it omits the notion that the "causing" is to occur not merely before the statutory deadline, but *in the future;* second, by using the perfect infinitive ("to have been delivered") rather than the present ("to be delivered"), it adds the utterly fascinating notion that the receipt is to occur before the causing of receipt. The omission of futurity and the addition of a requirement of antecedence are the only differences between saying, for example, "after he shall have found the hostages to be well treated" and "after he has found the hostages to have been well treated." In both cases good treatment must be established, just as under both the statutory text and the dissent's reformulation delivery must be established.

48

the prison authorities commences the 180-day period even if the request gets lost in the mail and is never delivered to the "receiving" State (i. *e.*, the State lodging the detainer, see Article II(c)). That still leaves open the textual possibility, however, that, *once delivery has been made*, the 180 days must be computed, not from the date of delivery but from the date of transmittal to the prison authorities. That is the only possibility the balance of our discussion will consider; and for convenience we shall refer to it as petitioner's interpretation.

Respondent places great reliance upon the provision's use of the future perfect tense *("shall have caused* to be delivered"). It seems to us, however, that the future perfect would be an appropriate tense for both interpretations:

The prisoner's transmittal of his request to the warden (if that is the triggering event), or the prosecutor's receipt of the request (if that is the triggering event), is to be completed ("perfected") at some date in the future (viewed from the time of the IAD's adoption) before some other date in the future that is under discussion (expiration of the 180 days). We think it must be acknowledged that the language will literally *bear* either interpretation-i. *e.*, that the crucial point is the prisoner's transmittal of his request, or that it is the prosecutor's receipt of the request. One can almost be induced to accept one interpretation or the other on the basis of which words are emphasized: "shall have *caused* to be delivered" *versus* "shall have caused to be *delivered."3*

3 The dissent contends that the phrase "he shall have caused" puts the focus "on the prisoner's act, and that act is

complete when he transmits his request to the warden." *Ibid.* It is not evident to us that the act of "causing to be delivered" is complete before delivery. Nor can we agree that, unless it has the purpose of starting the clock running upon transmittal to the warden, the phrase "he shall have caused" is "superfluous." *Ibid.* It sets the stage for the succeeding paragraph, making it clear to the reader that the notice at issue is a notice which (as paragraph (b) will clarify) the prisoner is charged with providing.

49

Though the text alone is indeterminate, we think resolution of the ambiguity is readily to be found in what might be called the sense of the matter, and in the import of related provisions. As to the former: Petitioner would have us believe that the choice of "triggers" for the 180-day time period lies between, on the one hand, the date the request is received by the prosecutor and, on the other hand, the date the request is delivered to the warden of the prison. In fact, however, while the former option is clearly identified by the textual term "delivered," there is no textual identification of a clear alternative at the other end. If one seeks to determine the moment at which a prisoner "caused" the later delivery of a properly completed request, nothing in law or logic suggests that it must be when he placed the request in the hands of the warden. Perhaps it was when he gave the request to a fellow inmate to deliver to the warden-or even when he *mailed* it to the warden (Article III(b) provides that the request "shall be given *or sent* by the prisoner to the warden" (emphasis added)). It seems unlikely that a legislature would select, for the starting point of a statute of limitations, a concept so indeterminate as "caused." It makes more sense to think that, as respondent contends, delivery is the key concept, and that paragraph (a) includes the notion of causality (rather than referring simply to "delivery" by the prisoner) merely to be more precise, anticipating the requirement of paragraph (b) that delivery be made *by* the warden upon the prisoner's initiation.

Another commonsense indication pointing to the same conclusion is to be found in what might be termed (in current political jargon) the "worst-case scenarios" under the two interpretations of the IAD. Under respondent's interpretation, it is possible that a warden, through negligence or even malice, can delay forwarding of the request and thus postpone the starting of the 180-day clock. At worst, the prisoner (if he has not checked about the matter for half a year) will not learn about the delay until several hundred days

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50

have elapsed with no trial. The result is that he will spend several hundred additional days under detainer (which entails certain disabilities, such as disqualification from certain rehabilitative programs, see *United States* v. *Mauro, 436* U. S. 340, 359 (1978)), and will have his trial delayed several hundred days.4 That result is bad, given the intent of the IAD. It is, however, no worse than what regularly occurred before the IAD was adopted, and in any event cannot be entirely avoided by embracing petitioner's view that transmittal to the warden is the measuring event. As we have said, the IAD unquestionably requires *delivery*, and only after that has occurred can one entertain the possibility of counting the 180 days from the transmittal to the warden. Thus, the careless or malicious warden, under petitioner's interpretation, may be unable to *delay* commencement of the 180-day period, but can *prevent it entirely*, by simply failing to forward the request. More importantly, however, the worst-case scenario under petitioner's interpretation produces results that are significantly worse: If, through negligence of the warden, a prisoner's IAD request is delivered to the prosecutor more than 180 days after it was transmitted to the warden, the prosecution will be precluded before the prosecutor even knows it has been requested. I t is possible, though by no means certain, that this consequence could be avoided by the receiving state court's invocation of

4 There is no substance to the dissent's assertion that one of the "reasonEs] for the IAD's creation" was to prevent the inmate from being "deprived of an opportunity to obtain a sentence to run concurrently with the sentence being served at the time the detainer is filed." *Post,* at 56, 57 (citations and internal quotation marks omitted). Since the IAD does not *require* detainers to be filed, giving a prisoner the opportunity to achieve concurrent sentencing on outstanding offenses is obviously an accidental consequence of the scheme rather than its objective. Moreover, we are unaware of any studies showing that judges willing to impose concurrent sentences are *not* willing (in the same circumstances) to credit out-of-state time. If they are (as they logically should be), the opportunity of obtaining a concurrent sentence would ordinarily have zero value.

51

the "good-cause continuance" clause of Article III(a) 5-but it seems to us implausible that such a plainly undesirable result was meant to be avoided only by resort to the (largely discretionary) application of that provision. It is more reasonable to think that the receiving State's prosecutors are in no risk of losing their case until they have been *informed* of the request for trial.

Indications in the text of Article III confirm, in our view, that the receiving State's receipt of the request starts the clock. The most significant is the provision of Article III(b) requiring the warden to forward the prisoner's request and accompanying documents "by registered or certified mail, return receipt requested." The lAD thus provides for documentary evidence of the date on which the request is delivered to the officials of the receiving State, but requires no record of the date on which it is transmitted to the warden (assuming that is to be considered the act of "causing"). That would be peculiar if the latter rather than the former were the critical date. Another textual clue, we think, is the lAD's apparent indifference as to the manner of transmittal to the warden: Article III(b) says only that the request "shall be *given or sent* by the prisoner to the warden" (emphasis added). A strange nonchalance, if the giving or sending (either one) is to start the 180 days. Petitioner avoids this difficulty by simply positing that it is the warden's *receipt*, no matter what the manner of giving or sending, that starts the clock-but there is simply no textual

5 Some courts have held that a continuance must be requested and granted before the 180-day period has expired. See, *e. g., Dennett* v. *State*, 19 Md. App. 376, 381, 311 A. 2d 437, 440 (1973) (citing *Hoss* v. *State*, 266 Md. 136, 143, 292 A. 2d 48, 51 (1972)); *Commonwealth* v. *Fisher*, *451* Pa. 102, 106, 301 A. 2d 605, 607 (1973); *State* v. *Patterson*, 273 S. C. 361, 363,256 S. E. 2d 417, 418 (1979). But see, *e. g., State* v. *Lippolis*, 107 N. J. Super. 137, 147,257 A. 2d 705, 711 (App. Div. 1969), rev'd, 55 N. J. 354, 262 A. 2d 203 (1970) *(per curiam)* (reversing on reasoning of dissent in Appellate Division). We express no view on this point.

52

basis for that; surely the "causing" which petitioner considers central occurs upon the giving or sending.

Petitioner makes the policy argument that "[f]airness requires the burden of compliance with the requirements of the lAD to be placed entirely on the law enforcement officials involved, since the prisoner has little ability to enforce compliance," Brief for Petitioner 8, and that any other approach would "frustrate the higher purpose" of the lAD, leaving "neither a legal nor a practical limit on the length of time prison authorities could delay forwarding a [request]," id., at 20. These arguments, however, assume the availability of a reading that would give effect to a request that is never delivered *at all.* (Otherwise, it remains within the power of the warden to frustrate the lAD by simply not forwarding.) As we have observed, the textual requirement "shall have caused to be delivered" is simply not susceptible of such a reading. Petitioner's "fairness" and "higher purpose" arguments are, in other words, more appropriately addressed to the legislatures of the contracting States, which adopted the lAD's text.

Our discussion has addressed only the second question presented in the petition for writ of certiorari; we have concluded that our grant as to the first question was improvident, and do not reach the issue it presents. We hold that the i80-day time period in Article III(a) of the lAD does not commence until the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him. The judgment of the Supreme Court of Michigan is affirmed.

It is so ordered.

JUSTICE BLACKMUN, with whom JUSTICE STEVENS joins, dissenting.

I am not persuaded that the language of Article III is ambiguous. The majority suggests that a search for the literal

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53

meaning of the contested phrase comes down to an unresolvable contest between a reading that emphasizes the word "caused" and one that emphasizes the word "delivered." But Article III contains another word that is at least as significant. That word favors petitioner's interpretation. The word is "he." The 180-day clock begins after *he-the* prisoner-"shall have caused" the request to be delivered. The focus is on the prisoner's act, and that act is complete when he transmits his request to the warden. That is the last time at which the inmate can be said to have done anything to "have caused to be delivered" the request. Any other reading renders the words "he shall

have caused" superfluous.

Even if the provision's focus on the prisoner's act were not so clear, the statute could not be read as Michigan suggests. The provision's use of the future perfect tense is highly significant. Contrary to the majority's contention that "the future perfect would be an appropriate tense for both interpretations," *ante*, at 48, the logical way to express the idea that receipt must be perfected before the provision applies would be to start the clock 180 days "after he has caused the request *to have been delivered.*" But the IAD does not say that, nor does it use the vastly more simple, "after delivery."

That this construction was intentional is supported by the drafting history of the IAD. When the Council of State Governments proposed the agreement governing interstate detainers, it also proposed model legislation governing intrastate detainers. See Suggested State Legislation Program for 1957, pp. 77-78 (1956). Both proposals contained language virtually identical to the language in Article III(a). See id., at 77. The Council stated that the intrastate proposal was "based substantially on statutes now operative in California and Oregon." *Id.*, at 76. Critically, however, neither State's provision referred to a delivery "caused" by the prisoner. The Oregon statute required trial "within 90 days of receipt" by the district attorney of the prisoner's

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54

notice, Act of Apr. 29, 1955, ch. 387, § 2(1), 1955 Ore. Laws 435, and the California law required trial "within ninety days after [he] shall have delivered" his request to the prosecutor, Act of May 28, 1931, ch. 486, § 1, 1931 Cal. Stats. 1060-1061. If, as Michigan insists here, see Tr. of Oral Arg. 23, 26, 37, the Council's use of "caused to be delivered" was somehow meant to convey "actual receipt," then the drafters' failure to follow the clear and uncomplicated model offered by the Oregon provision is puzzling in the extreme. When asked at oral argument about this failure, counsel for *amicus* the United States replied that "the problem with using the verb receive rather than the verb deliver in Article III is that ... [t]hat would shift the focus away from the prisoner, and the prisoner has a vital role under article III ... because he initiates the process." *Id.*, at 41. I submit that the focus on the prisoner is precisely the point, and that the reason the drafters used the language they did is because the 180day provision is triggered by the action of the inmate.

Nevertheless, the majority finds the disputed language to be ambiguous, *ante*, at 47-48, and it exhibits no interest in the history of the IAD. Instead, the majority asserts that the answer to the problem is to be found in "the sense of the matter." *Ante*, at 49. But petitioner's reading prevails in the arena of "sense," as well.

I turn first to the majority's assumption that the 180-day provision is not triggered if the request is never delivered. Because "the IAD unquestionably requires *delivery*, and only after that has occurred can one entertain the possibility of counting the 180 days from the transmittal to the warden," *ante*, at 50, the majority attacks as illogical a reading under which the negligent or malicious warden-who can prevent entirely the operation of the 180-day rule simply by failing to forward the prisoner's request-could not *delay* the starting of the clock. *Ante*, at 49-50. That premise is flawed. Obviously, the rule anticipates actual delivery. Article III(b) requires prison officials to forward a prisoner's request

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55

promptly, as well. The fact that the rule for marking the start of the 180-day period is written in a fashion that contemplates actual delivery, however, does not mean that it cannot apply if the request is never delivered. Although the IAD assumes that its signatories will abide by its terms, I find nothing strange in the notion that the 180-day provision might be construed to apply as well to an unanticipated act of bad faith.1

Even on its own terms, the majority's construction is not faithful to the purposes of the IAD. The IAD's primary purpose is not to protect prosecutors' calendars, or even to protect prosecutions, but to provide a swift and certain means for resolving the uncertainties and alleviating the disabilities created by outstanding detainers. See Article I; *Carchman* v. *Nash*, 473 U. S. 716, 720 (1985); Note, The Effect of Violations of the Interstate Agreement on Detainers on Subject Matter Jurisdiction, 54 Ford. L. Rev. 1209, 1210, n. 12 (1986). If the 180 days from the prisoner's invocation of the IAD is allowed to stretch into 200 or 250 or 350 days, that purpose is defeated.

In each of this Court's decisions construing the IAD, it properly has relied upon and emphasized the purpose of the IAD. See *Carchman* v. *Nash*, 473 U. S., at 720, 729-734; *Cuyler* v. *Adams*, 449 U. S. 433, 448-450 (1981); *United*

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1 For the prisoner aggrieved by a flagrant violation of the IAD, other remedies also may be available. The Courts of Appeals have split over the question of an IAD violation's cognizability on habeas. Compare, *e. g.*, *Kerr* v. *Finkbeiner*, 757 F.2d 604 *(CA4)* (denying habeas relief), cert. denied, 474 U. S. 929 (1985), with *United States* v. *Williams*, 615 F.2d 585, 590 (CA3 1980) (IAD violation cognizable on habeas). See generally M. Mushlin & F. Merritt, Rights of Prisoners 324 (Supp. 1992); Note, The Effect of Violations of the Interstate Agreement on Detainers on Subject Matter Jurisdiction, 54 Ford. L. Rev. 1209,1212-1215 (1986); Note, Federal Habeas Corpus Review of Nonconstitutional Errors: The Cognizability of Violations of the Interstate Agreement on Detainers, 83 Colum. L. Rev. 975 (1983). At argument, the State and the United States, respectively, suggested that a sending State's failures can be addressed through a 42 U. S. C. § 1983 suit, Tr. of Oral Arg. 33, or a mandamus action, id., at 44.

56

States v. *Mauro*, 436 U. S. 340, 361-362 (1978). The majority, however, gives that purpose short shrift, focusing instead on "worst-case scenarios," *ante*, at 49, and on an assessment of the balance of harms under each interpretation. Two assumptions appear to underlie that inquiry. The first-evident in the cursory and conditional nature of the concession that to spend several hundred additional days under detainer "is bad, given the intent of the IAD," *ante*, at 50-is that the burden of spending extra time under detainer is relatively minor. The failure to take seriously the harm suffered by a prisoner under detainer is further apparent in the majority's offhand and insensitive description of the practical impact of such status. To say that the prisoner under detainer faces "certain disabilities, such as disqualification from certain rehabilitative programs," ibid., is to understate the matter profoundly. This Court pointed out in *Carchman* v. *Nash*, that the prisoner under detainer bears a very heavy burden:

> "'[T]he inmate is (1) deprived of an opportunity to obtain a sentence to run concurrently with the sentence being served at the time the detainer is filed; (2) classified as a maximum or close custody risk; (3) ineligible for initial assignments to less than maximum security prisons (i. e., honor farms or forestry camp work); (4) ineligible for trustee [sic] status; (5) not allowed to live in preferred living quarters such as dormitories; (6) ineligible for study-release programs or work-release programs; (7) ineligible to be transferred to preferred medium or minimum custody institutions within the correctional system, which includes the removal of any possibility of transfer to an institution more appropriate for youthful offenders; (8) not entitled to preferred prison jobs which carry higher wages and entitle [him] to additional good time credits against [his] sentence; (9) inhibited by the denial of possibility of parole or any commutation of his sentence; (10) caused anxiety and

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57

> thus hindered in the overall rehabilitation process since he cannot take maximum advantage of his institutional opportunities.'" 473 U. S., at 730, n. 8, quoting *Cooper* v. *Lockhart*, 489 F.2d 308, 314, n. 10 (CA8 1973).

These harms are substantial and well recognized. See, *e. g.*, *Smith* v. *Hooey*, 393 U. S. 374, 379 (1969); *United States* v. *Ford*, 550 F.2d 732, 737-740 (CA2 1977) (citing cases), aff'd *sub nom. United States* v. *Mauro*, 436 U. S. 340 (1978); L. Abramson, Criminal Detainers 29-34 (1979); Note, 54 Ford. L. Rev., at 1210, n. 12. More important for our purposes, they were the reason for the IAD's creation in the first place. The majority's sanguine reassurance that delays of several hundred days, while "bad," are "no worse than what regularly occurred before the IAD was adopted," *ante*, at 50, is thus perplexing. The fact that the majority's reading leaves prisoners no worse off than if the IAD had never been adopted proves nothing at all, except perhaps that the majority's approach nullifies the ends that the IAD was meant to achieve. Our task, however, is not to negate the IAD but to interpret it. That task is impossible without a proper understanding of the seriousness with which the IAD regards the damage done by unnecessarily long periods spent under detainer.

The majority's misunderstanding of the stakes on the inmate's side of the scale is matched by its miscalculation of the interest of the State. It is widely acknowledged that only a fraction of all detainers ultimately result in conviction or further imprisonment. See J. Gobert & N. Cohen, Rights of Prisoners 284 (1981); Dauber, Reforming the Detainer System: A Case Study, 7 Crim. L. Bull. 669, 689-690 (1971); Note, 54 Ford. L. Rev., at

1210, n. 12. It is not uncommon for a detainer to be withdrawn just prior to the completion of the prisoner's sentence. See *Carchman* v. *Nash*, *473* U. S., at 729-730; Note, 54 Ford. L. Rev., at 1210, n. 12; Comment, Interstate Agreement on Detainers and the Rights It Created, 18 Akron L. Rev. 691, 692 (1985). All too often,

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58

detainers are filed groundlessly or even in bad faith, see *United States* v. *Mauro*, 436 U. S., at 358, and n. 25, solely for the purpose of harassment, see *Carchman* v. *Nash*, *473* U. S., at 729, n. 6. For this reason, Article III is intended to provide the prisoner" 'with a procedure for bringing about a prompt test of the substantiality of detainers placed against him by other jurisdictions.'" *Id.*, at 730, n. 6 (quoting House and Senate Reports).

These two observations-that detainers burden prisoners with onerous disabilities and that the paradigmatic detainer does not result in a new conviction-suggest that the majority has not properly assessed the balance of interests that underlies the IAD's design. Particularly in light of Article IX's command that the IAD "shall be liberally construed so as to effectuate its purposes," I find the majority's interpretation, which countenances lengthy and indeterminate delays in the resolution of outstanding detainers, impossible to sustain.

Finally, I must emphasize the somewhat obvious fact that a prisoner has no power of supervision over prison officials. Once he has handed over his request to the prison authorities, he has done all that he can do to set the process in motion. For that reason, this Court held in *Houston* v. *Lack*, 487 U. S. 266 (1988), that a *pro se* prisoner's notice of appeal is "filed" at the moment it is conveyed to prison authorities for forwarding to the district court. Because of the prisoner's powerlessness, the IAD's inmate-initiated 180day period serves as a useful incentive to prison officials to forward IAD requests speedily. The Solicitor General asserts that the prisoner somehow is in a better position than are officials in the receiving State to ensure that his request is forwarded promptly, because, for example, "the prisoner can insist that he be provided with proof that his request has been mailed to the appropriate officials." Brief for United States as *Amicus Curiae* 16-17. This seems to me to be severely out of touch with reality. A prisoner's demands

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59

cannot be expected to generate the same degree of concern as do the inquiries and interests of a sister State. Because of the IAD's reciprocal nature, the signatories, who can press for a speedy turnaround from a position of strength, are far better able to bear the risk of a failure to meet the 180day deadline.2

The IAD's 180-day clock is intended to give the prisoner a lever with which to move forward a process that will enable him to know his fate and perhaps eliminate burdensome conditions. It makes no sense to interpret the IAD so as to remove from its intended beneficiary the power to start that clock. Accordingly, I dissent.

2 Even the Solicitor General acknowledged that "a State that has been negligent in fulfilling its duty may well be subject to political pressure from other States that are parties to the IAD." Tr. of Oral Arg. 44. The fact that nevertheless in some cases the ISO-day rule may cause legitimate cases to be dismissed is no small matter, but dismissal is, after all, the result mandated by the IAD. Moreover, where a diligent prosecutor is surprised by the late arrival of a request, I would expect that, under appropriate circumstances, a good-cause continuance would be in order. See Article III (a). (I acknowledge, however, that, as the majority points out, *ante*, at 51, n. 5, some courts have refused to grant a continuance after the expiration of the ISO-day period.) The majority finds this obvious solution "implausible," but to me it is far more plausible than a regime under which the inmate is expected to "insist" that recalcitrant prison authorities move more quickly.

Materials

Oral Arguments

Oral Argument - December 08, 1992