

IN THE COURT OF APPEALS OF IOWA

No. 1-125 / 90-1139

FILED

MAY 20 1991

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

MARK RICHARD KLOUDA,

Appellant.

420

Appeal from the Iowa District Court for Linn County,
Robert E. Sosalla and John F. Siebenmann, District
Associate Judges.

Kluda appeals his convictions, following a bench
trial, of two counts of operating while intoxicated. The
two appeals have been consolidated. **AFFIRMED.**

Jon M. Kinnamon, Cedar Rapids, for appellant.

Bonnie J. Campbell, Attorney General, Mark Joel
Zbieroski, Assistant Attorney General, Denver D. Dillard,
County Attorney, and Russell G. Keast, Assistant County
Attorney, for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

PER CURIAM

In April 1988 the Linn County Attorney filed a trial information charging Mark Klouda with OWI. In May 1988 the Linn County Attorney filed a second trial information charging Klouda with a separate incident of OWI. In July 1988 the district court issued warrants for Klouda's arrest on these two charges.

Sometime later in 1988, Klouda was incarcerated in Nevada. Klouda filed a form under the Interstate Agreement of Detainers (IAD). Iowa Code chap. 821. He requested final disposition of the outstanding Linn County warrants. However, the State of Iowa did not respond to Klouda's request. Iowa did not file any detainers against Klouda pursuant to the IAD.

In July 1989 Klouda filed a motion to dismiss both of the Linn County OWI charges on the ground the State had failed to try the charges within 180 days of his request for final disposition pursuant to the IAD. Klouda relied on an IAD provision requiring a jurisdiction which files a detainer against an out-of-state inmate must try the underlying charge within 180 days of filing the detainer. Iowa Code section 821.1, article V (c).

The district court denied Klouda's motion to dismiss the two OWI charges. The district court held the IAD's 180-day speedy trial limit applies only when a detainer has

been filed pursuant to the IAD. Because no detainer had been filed against Klouda, the district court held the 180-day speedy trial limit had no application to Klouda. Following a bench trial on stipulated facts, Klouda was convicted of both OWI charges. He has appealed these convictions. The two appeals have been consolidated.

Klouda contends the district court should have dismissed the OWI charges on the ground the State had failed to comply with the IAD's 180-day speedy trial limit. Klouda argues the district court erred by holding only the filing of a detainer could trigger the 180-day speedy trial limit. He asserts his October 1988 request for disposition of the charges triggered the 180-day limit.

The State argues the district court was correct in concluding the 180-day limit can be triggered only by the filing of a detainer.

Our review is on errors of law. Iowa R. App. P. 4.

Our review of the facts and the law convinces us State v. Wood, 241 N.W.2d 8 (Iowa 1976), is controlling. In that case, the Iowa Supreme Court stated:

[T]he evil to be remedied by IAD [Interstate Agreement on Detainers] was the existence of detainers lodged against a prisoner rather than the mere presence of untried, but otherwise unpursued criminal charges in a party state. It is not until the jurisdiction having the untried charge lodges a detainer based on an indictment, information or complaint with the state of the defendant's imprisonment that the provisions of the IAD become operative. Prior to that time, no restraints have been placed on the prisoner.

Id. at 12-13 (emphasis in original).

No detainer had ever been filed in this case on Klouda. The "mere presence of untried, but otherwise unpursued criminal charges" is not enough to trigger the statute. It is the State's action of filing a detainer, not the prisoner's action of requesting disposition, which triggers the interstate agreement on detainers. Id. The trial court correctly overruled Klouda's motion to dismiss for lack of a speedy trial based on the provisions of Iowa Code section 821.

We affirm the trial court.

AFFIRMED.