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TIBA's Case of the Week

Case Name: Ex parte Oscar Roy Doster

- OFFENSE: Pre-Trial Habeas Corpus
- COUNTY: Freestone
- COURT OF APPEALS: Waco 2009
- C/A CITATION: 282 S.W.3d 110
- C/A RESULT: Conviction Reversed
- CCA. CASE No. PD-0504-09 DATE OF OPINION: February 3, 2010
- DISPOSITION: Court of Appeals Reversed - Appeal Dismissed
- OPINION: Keller, PJ. VOTE: 9-0
- TRIAL COURT: 87th D/C; Hon. H.D. Black
- LAWYERS: Frank Blazek, John Wright (Defense); Wesley Mau (OAG)

114 Habeas Corpus at the Trial Court Level / Cognizibility of Issues: While Appellant was imprisoned in Alabama, a capital murder indictment was filed against him in Freestone County and a detainer was placed on him. The parties agreed that Appellant's presence in Texas was obtained pursuant to a Governor's Warrant under the Uniform Criminal Extradition Act (UCEA). After the expiration of 120 days from Appellant's arrival in Texas without being tried, Appellant filed a motion to dismiss for failure to comply with the IAD deadline, which motion was denied by the trial judge. Appellant then filed a pretrial application for a writ of habeas corpus, contending that he was entitled to a dismissal of the prosecution under the IAD. The trial judge denied the application, and Appellant filed notice of appeal. The Court of Appeals held that the IAD did not apply because Appellant was extradited under the UCEA. Ex parte Doster, 282 S.W.3d 110 (Tex.App. - Waco 2009)(see , Vol. 17, No. 1; 01/12/2009; and Vol. 17, No. 6; 02/16/2009). The Court of Criminal Appeals granted Appellant's ground for review to resolve whether the IAD required that the prosecution be dismissed. In addition, the Court ordered the parties to brief the question whether a pretrial habeas corpus proceeding, followed by an interlocutory appeal, is an appropriate vehicle for raising a claim that the prosecution should be dismissed because the State failed to comply with the IAD.

Holding: Because an interlocutory appeal is an extraordinary remedy, appellate courts have been careful to ensure that a pretrial writ is not misused to secure pretrial appellate review of matters that in actual fact should not be put before appellate courts at the pretrial stage. Aside from double-jeopardy issues, pretrial habeas is not appropriate when the question presented, even if resolved in the defendant's favor, would not result in immediate release. And pretrial habeas is unavailable when the resolution of a claim may be aided by the development of a record at trial. In this case, the rationale that would support the cognizability of a pretrial challenge to a prosecution because of an IAD violation - judicial economy - does not apply. Allowing an exception to the rule against pretrial appeals in speedy trial claims under the IAD would threaten precisely those values manifested by the IAD. Judicial economy is served by pretrial appeal of an IAD claim only if the defendant prevails. If he is allowed to bring his interlocutory appeal and he loses, then, generally, more judicial resources will be expended than had the interlocutory appeal been barred. A defendant who loses on his IAD claim would spend more time in Texas - contrary to the stated purpose of the IAD and the

policy for permitting a pretrial habeas challenge. Moreover, IAD claims are not akin to double-jeopardy claims. The speedy trial right under the IAD is to the speedy disposition of the charges; it is not a right not to be tried on those charges. If a trial court believes that the IAD has been violated, then it should rule in the defendant's favor on a motion to dismiss, and if it does so, then the State can appeal that disposition. Such an appeal is not interlocutory because a ruling in the defendant's favor would end the prosecution. If the trial court rules against the defendant and the defendant's entitlement to relief is indisputable, as a matter of fact and law, then mandamus might be an appropriate remedy. We conclude that pretrial habeas corpus proceedings are not an appropriate avenue for raising an IAD claim.

Sidebars: (David A. Schulman) This is, in my humble opinion, total nonsense. The test for cognizibility in pre-trial habeas corpus should be whether "a ruling in the defendant's favor" would prevent a trial in the challenged case. If the answer is yes, who cares that he (or she) will continue in custody somewhere else or on some other charges in a different case? If the answer is no, then I agree the claim should not be cognizible at this level. Further, under the theory in this case, if the State indicts somebody in five separate cases and four of them are absolutely bogus, the trial court can refuse to hear the applications in the four cases (despite the dictates of Chapter 11, C.Cr.P.), because, even if the four writ applications have merit, the defendant will remain in custody on the fifth case.