

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 120261-U
NO. 4-12-0261
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
December 12, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Vermilion County
FREDERICK W. PERKINS,)	No. 10CF684
Defendant-Appellee.)	
)	Honorable
)	Nancy S. Fahey,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court erred when it applied the incorrect speedy-trial statute and granted defendant's motion to dismiss the charges against him, improperly finding the State failed to bring defendant to trial within 120 days.
- (2) OSAD's motion to withdraw as counsel on appeal is granted.
- ¶ 2 On December 9, 2010, the State charged defendant, Frederick W. Perkins, with robbery, a Class 2 felony (720 ILCS 5/18-1(a), (b) (West 2010)); criminal trespass to a vehicle, a Class A misdemeanor (720 ILCS 5/21-2 (West 2010)); and theft, a Class 4 felony (720 ILCS 5/16-1(a)(3), (b)(2) (West 2010)), all committed on December 6, 2010. On October 4, 2011, defendant filed a speedy-trial demand pursuant to the Intrastate Detainers Act (730 ILCS 5/3-8-10 (West 2010)) and the speedy-trial statute (725 ILCS 5/103-5(b) (West 2010)). On February 21, 2012, defendant filed a motion to dismiss the charges against him, alleging the State failed to

bring him to trial within 120 days. The trial court granted defendant's motion.

¶ 3 The State appeals, arguing the trial court applied the wrong speedy-trial statute and the State had 160 days, as opposed to 120 days, to bring defendant to trial, which had not yet passed when defendant filed his motion to dismiss the charges against him.

¶ 4 The office of the State Appellate Defender (OSAD) was appointed to represent defendant. OSAD maintains the State's contentions are correct and thus asserts defendant can make no colorable argument on appeal the trial court properly granted his motion to dismiss the charges against him. OSAD has therefore filed a motion to withdraw as counsel on appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *People v. Jones*, 38 Ill. 2d 384, 231 N.E.2d 390 (1967). We agree with the State and reverse the court's dismissal of the charges against defendant and remand for further proceedings. We further grant OSAD's motion to withdraw as counsel on appeal.

¶ 5 I. BACKGROUND

¶ 6 On June 11, 2010, prior to the filing of charges in this case, defendant pleaded guilty in Vermilion County case No. 10-CF-123, and the trial court set a sentencing hearing for July 27, 2010. On July 26, 2010, defendant was arrested in Vermilion County case No. 10-CF-398. The record does not indicate what charges the State filed against defendant in either cause. On October 15, 2010, the court released defendant on \$10,000 recognizance bond in case No. 10-CF-398. On October 22, 2010, defendant entered a guilty plea in case No. 10-CF-398, and the court set a sentencing hearing for December 21, 2010.

¶ 7 On December 9, 2010, the State charged defendant with robbery, criminal trespass to a vehicle, and theft, in Vermilion County case No. 10-CF-684. On the same day, defendant

appeared before the trial court and was arraigned on the charges against him. The court remanded defendant to the custody of the sheriff in lieu of a \$50,000 bond. The court set a jury trial for March 4, 2011.

¶ 8 On December 21, 2010, the trial court sentenced defendant to concurrent prison terms of 30 months in case Nos. 10-CF-123 and 10-CF-398. On January 7, 2011, defendant was remanded to the Illinois Department of Corrections (Department) to serve his sentences in case Nos. 10-CF-123 and 10-CF-398.

¶ 9 On March 4, 2011, defendant appeared before the trial court in this case and requested a continuance. The trial court granted defendant's continuance and remanded him to the Department's custody. The court set a jury trial for May 13, 2011. Again, on May 13, 2011, defendant appeared and asked for a continuance, which the trial court granted. The court then set a jury trial for July 22, 2011. On July 22, 2011, defendant asked for a third continuance. The court granted defendant's request and scheduled a jury trial for September 16, 2011.

¶ 10 On September 16, 2011, the State and defendant appeared before the trial court. The State requested a continuance. Defense counsel responded,

"I met with my client. He is adamant he wants to demand trial. We are making that request. He said he wanted 60 days to communicate with me back and forth about his defense. I am making the record that we are demanding trial. So, we are objecting to the State's motion to continue. That's our proposition on this case."

The trial court granted the State's continuance over defendant's objection, stating "[t]he situation

that I have at hand for Mr. Perkins is that he's not in custody on 10[-]CF[-]684, which would be, of course, my first worry." The court set a jury trial for December 2, 2011.

¶ 11 On October 4, 2011, defendant filed a speedy-trial demand pursuant to the Intrastate Detainers Act and the speedy-trial statute. In his demand, defendant stated he was incarcerated in the Department on separate charges and was serving a 30-month sentence, having a projected parole date of January 1, 2012. Defendant demanded he be brought to trial within 160 days, without regard to whether he was still in custody of the Department or released prior to the expiration of 160 days.

¶ 12 On December 2, 2011, the parties appeared before the trial court, and the State requested a continuance. The court granted the State's request over defendant's objection and set a jury trial for February 21, 2012. On February 21, 2012, the parties appeared, and the State asked for another continuance. The court granted the State's continuance over defendant's objection and set a jury trial for March 5, 2012.

¶ 13 On February 21, 2012, defendant filed a motion to dismiss the charges against him, alleging the State was required to bring defendant to trial within 120 days and failed to do so. The State responded to defendant's motion, arguing the State had 160 days to bring defendant to trial, pursuant to the Intrastate Detainers Act, and only 141 days had passed at the time of defendant's filing of his motion.

¶ 14 On February 29, 2012, the trial court granted defendant's motion. The court found defendant was entitled to the 120-day automatic speedy-trial right of section 103-5(a) of the speedy-trial statute (725 ILCS 5/103-5(a) (West 2010)). The court further found "defendant ha[d] been in continuous custody in this case since December 9, 2010" for a total of 251 days.

The court also addressed defendant's October 4, 2011, written speedy-trial demand and explained the following:

"The fact that [d]efendant on October 4, 2011, ten (10) months after arraignment on this case, filed an Intrastate Detainers Speedy Trial demand pursuant to 725 ILCS 5/103-5(b), in this [c]ourt's opinion, does not deprive [d]efendant of his automatic right under 725 ILCS 5/103-5(a). The [c]ourt considers defendant's request as being analogous to an alternative pleading and finds the demand was unnecessary. Under this fact scenario, [d]efendant was never required to file a written demand for a speedy trial. The fact, that he ultimately did, in this [c]ourt's opinion, did not strip him of the original, automatic right to a speedy trial within 120 days."

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, the State argues the trial court applied the wrong speedy-trial statute and the State had 160 days, as opposed to 120 days, to bring defendant to trial, which had not yet lapsed when defendant filed his motion to dismiss the charges against him. OSAD agrees with the State's contentions and therefore seeks to withdraw as defendant's counsel on appeal.

¶ 18 The issue in this case is whether the speedy-trial statute (725 ILCS 5/103-5 (West 2010)) or the Intrastate Detainers Act (730 ILCS 5/8-3-10 (West 2010)) should be applied, which is a legal question. Thus, our review is *de novo*. See *People v. Williams*, 239 Ill. 2d 503, 506, 942 N.E.2d 1257, 1260 (2011).

¶ 19 The speedy-trial statute has two subsections, which require the State to bring a defendant to trial within 120 or 160 days. Subsection (a) provides that "[e]very person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he was taken into custody." 725 ILCS 5/103-5(a) (West 2010). This subsection "creates an automatic 120-day speedy-trial right for persons held in custody on the pending charge," and such persons do not need to file a speedy-trial demand. *People v. Wooddell*, 219 Ill. 2d 166, 174, 847 N.E.2d 117, 122 (2006). Subsection (b) provides that "[e]very person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant demands trial." 725 ILCS 5/103-5(b) (West 2010). Persons on bail or recognizance are required to file a speedy-trial demand under this subsection and "serve the State with a formal demand" before the 160-day period begins to run. (Internal quotation marks omitted.) *Wooddell*, 219 Ill. 2d at 175, 847 N.E.2d at 122.

¶ 20 The legislature created an additional speedy-trial statute that applies to committed persons. The Intrastate Detainers Act provides that subsection (b) of the speedy-trial statute and its 160-day speedy-trial provision applies to "persons committed to any institution or facility or program of the [Department] who have untried complaints, charges, or indictments pending in any county of this State[.]" 730 ILCS 5/3-8-10 (West 2010) (except persons sentenced to death).

¶ 21 Our supreme court has concluded a defendant is subject to the speedy-trial statute that applies *at the time he makes his speedy-trial demand*. *Wooddell*, 219 Ill. 2d at 177, 847 N.E.2d at 123-24. The Intrastate Detainers Act applies to those defendants who have already been convicted and sentenced to the Department and are serving out their sentence when additional charges are brought against them. The issue, however, in the case *sub judice*, is

whether the Intrastate Detainers Act applies to those individuals who have been taken into custody on a pending charge and are later committed to the Department on an unrelated offense. We conclude it does.

¶ 22 This court has held the Intrastate Detainers Act "applies to a person committed to the Department *after* his arrest on a pending charge." (Emphasis added.) *People v. Jackson*, 162 Ill. App. 3d 476, 479, 515 N.E.2d 390, 393 (1987). In *People v. King*, 366 Ill. App. 3d 552, 555-57, 852 N.E.2d 559, 561-63 (2006), we concluded the Intrastate Detainers Act applied to a defendant who was initially arrested and taken into custody for possession of cocaine but thereafter remained in the Department's custody on a parole-hold warrant based on the pending cocaine charges.

¶ 23 The only difference between *King* and this case is the Department's reason for later taking the defendant into its custody. On December 9, 2010, defendant appeared before the trial court and was arraigned on the charges herein. The court set bond at \$50,000 and defendant remained in the sheriff's custody. On December 21, 2010, the court sentenced defendant to concurrent prison terms in case Nos. 10-CF-123 and 10-CF-398. On January 7, 2011, defendant was remanded to the Department to serve his sentence in case Nos. 10-CF-123 and 10-CF-398. Thus, the Department took defendant into its custody on unrelated offenses after he was arrested and in custody on the underlying charges in this case. On October 4, 2011, defendant filed his speedy-trial demand.

¶ 24 In *King*, the Department took the defendant into its custody based on a parole violation after his initial arrest for the underlying pending charges. *King*, 366 Ill. App. 3d at 553-54, 852 N.E.2d at 560. In *King* and in this case, the defendant was taken into custody based on

the underlying offense, but was *thereafter transferred* to the custody of the Department for a reason other than the underlying offense. We see no reason to distinguish between these two factual scenarios, and we conclude the Intrastate Detainers Act would apply in both situations. Thus, as the Intrastate Detainers Act applied to the defendant in *King*, it likewise applies to defendant in this case.

¶ 25 Concluding the Intrastate Detainers Act, and not section 103-5(a) of the speedy-trial statute, applies to defendant, we must next determine whether the State took more than 160 days to bring defendant to trial and if it was proper for the trial court to dismiss the charges against defendant.

¶ 26 The State argues when defendant filed his motion to dismiss the charges against him, 160 days had not yet elapsed since defendant filed his speedy-trial demand. We agree.

¶ 27 On December 9, 2010, the State charged defendant with robbery, theft, and criminal trespass to a vehicle, and the trial court arraigned defendant. Defendant remained in custody on the pending charge and was therefore entitled to the automatic 120-day speedy-trial protections of section 103-5(a) of the speedy-trial statute at that time. However, when the Department took custody of defendant on January 7, 2011, in unrelated cases, defendant became subject to the Intrastate Detainers Act and its 160-day provision. Once defendant was transferred to the Department and subject to the Intrastate Detainers Act, defendant was required to file a formal speedy-trial demand. On October 4, 2011, defendant filed such demand and requested he be brought to trial within 160 days.

¶ 28 At the time of defendant's October 4, 2011, speedy-trial demand, a jury trial was scheduled to take place on December 2, 2011, 60 days later. On December 2, 2011, the State

