COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STATE OF OHIO	**:**	
Plaintiff	**:**	**CASE NO. 2012 CR 00018**
vs.	**:**	**Judge McBride**
ERIC PAUL MORGAN	**:**	**DECISION/ENTRY**
Defendant	**:**	

David S. McCune, assistant prosecuting attorney for the State of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Lawrence R. Fisse, assistant public defender for the defendant Eric Paul Morgan, 10 South Third Street, Batavia, Ohio 45103.

This cause is before the court for consideration of a motion to dismiss filed by the defendant Eric Paul Morgan.

The court scheduled and held an evidentiary hearing on the motion to dismiss on February 20, 2013. At the conclusion of that hearing, the court took the issues raised by the motion under advisement.

Upon consideration of the motion, the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

On January 11, 2012, the indictment was filed in the present case charging the defendant Eric Morgan with one count of aggravated robbery in violation of R.C. 2911.01(A)(1), a felony of the first degree, with a firearm specification, and one count of robbery in violation of R.C. 2911.02(A)(2), a felony of the second degree. A warrant on Indictment was issued on that same date. On January 19, 2012, the defendant failed to appear for arraignment and the court continued the matter until the defendant was served with the warrant on indictment. That entry of continuance noted that the time in which the defendant must be brought to trial was extended by that period of time pursuant to R.C. 2945.72.[1]

The defendant, who was located in the Grimes County Jail in Texas awaiting disposition of charges in that county, was notified of the charges against him in Clermont County by a Grimes County Magistrate.[2] The defendant was sentenced in Grimes County in April 2012 and sent to the Holliday Unit in Huntsville, Texas, which is part of the Texas state prison system.

On May 25, 2012, the defendant filed a handwritten "motion for speedy trial," which stated that he was currently an inmate in the Texas Department of Criminal Justice and requested that the present matter be set for trial. The motion lists the defendant's address as being in the Holliday Unit in Huntsville, Texas. The motion also contains a certificate of service which states that a copy of said motion was tendered to the Clermont County Prosecutor's Office. There was no certificate completed by any

[1] Entry of Continuance, filed January 19, 2012.
[2] Defendant's Exhibit 8.

Texas official having custody of the defendant accompanying the defendant's motion for speedy trial.

Interstate Agreement on Detainers Forms IV and V were completed by the Clermont County Prosecutor and the court on June 11, 2012 and Form VI was completed on June 19th.[3] These documents list the defendant's location as the Holliday Unit in Huntsville, Texas.

Per the defendant's testimony on this matter, in June 2012, the defendant was transferred to the Byrd Unit in Huntsville for approximately six weeks. In mid-July, he was transferred to the Powledge Unit in Palestine, Texas for several weeks. He was then transferred back to Huntsville for approximately one week, went back to the Powledge Unit for approximately three weeks, and then was sent back to Huntsville to await an extradition hearing.

On August 2, 2012, a letter from the Clermont County Prosecutor's Office to Brad Livingston, the Executive Director of the Texas Department of Corrections stated that the attempt to gain custody of the defendant in July 2012 was unsuccessful and indicating that Clermont County was still attempting to gain custody of the defendant.[4]

Brad Livingston's office, via Joni M. White (Deputy Administrator, IAD), sent Forms II, III, and IV pertaining to the defendant attached to a letter dated September 18, 2012. A certified mail envelope shows these documents were mailed to the Clermont County Prosecutor's Office on September 25, 2012 and a notation on the letter indicates the documents were received by the Prosecutor's Office on October 1st.[5]

[3] Defendant's Exhibits 3-4 and 9.
[4] Defendant's Exhibit 12.
[5] State's Exhibit D.

On September 27, 2012, the defendant was taken to Angelina County, Texas due to an active bench warrant for a pending case.[6] A sentence was imposed in the Angelina County case on October 31, 2012.[7] The defendant was then returned to the Holliday Unit in Huntsville on December 3, 2012.[8]

The defendant was ultimately transported to the Clermont County Jail and arraigned on December 19, 2012. The defendant filed the present motion to dismiss on January 24, 2013, arguing that the present action should be dismissed for failing to bring him to trial within 180 days of June 11, 2012.

LEGAL ANALYSIS

The Interstate Agreement on Detainers (IAD) "is 'a compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State's outstanding charges against a prisoner in another State.' "[9] "The purpose of the IAD is 'to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints.' "[10] The IAD has been codified in Ohio as R.C. 2963.30 and states in pertinent part as follows:

> "Article III
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> (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party

[6] State's Exhibit E.
[7] State's Exhibit B.
[8] State's Exhibit E.
[9] *State v. Owens* (Sept. 3, 2002), 12th Dist. No. CA2001-09-074, 2002-Ohio-4485, ¶ 14, quoting *New York v. Hill* (2000), 528 U.S. 110, 111, 120 S.Ct. 659, 145 L.Ed.2d 560.
[10] Id. at ¶ 15, quoting R.C. 2963.30, Article I.

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 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 decisions 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.

(d) Any request or final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other officials having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which

the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

* * *

Article VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, 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."

The defendant argues that the 180-day period set forth in Article III was triggered because his motion for speedy trial was in substantial compliance with the requirements of Article III.

In the case of *State v. Mourey* (1992), 64 Ohio St.3d 482, 597 N.E.2d 101, "the Supreme Court of Ohio held that the time period in Article III of R.C. 2963.30 begins to run if a prisoner substantially complies with the requirements set forth in Article III(a) and (b)."[11] The court found that "a prisoner substantially complies with the requirements of Article III(a) and (b) where he 'causes to be delivered to the prison officials where incarcerated, appropriate notice or documentation requesting a disposition of the charges for which the detainer has been filed against him.' "[12] The court reasoned that "since the prisoner had done everything within his control when his IAD request was delivered to the prison officials, the one hundred eighty day period in Article III should commence at that point and not be tolled for delays that were attributable to prison officials or prosecutors."[13] The United States Supreme Court issued a later decision which held that "the one hundred eighty day time period in Article III(a) of the IAD does not begin until a prisoner's request for disposition is actually delivered to the court and the prosecuting officer that lodged the detainer against him."[14]

Again, in order to complete the requirements of Article III, "the prisoner must give the person who has custody of him a written notice and request for final disposition of the charges[,]" and that person then forwards the defendant's request "with the

[11] *State v. Schnitzler* (Oct. 19, 1998), 12th Dist. No. CA98-01-008, 1998 WL 729250, *3.
[12] Id., quoting *Mourey* at paragraph two of the syllabus.
[13] Id., citing *Mourey* at 487.
[14] Id. at *4, citing *Fex v. Michigan* (1993), 507 U.S. 43, 52, 113 S.Ct. 1085, 1091, 122 L.Ed.2d 406.

certificate to the appropriate prosecuting official and court."[15] The Twelfth District Court of Appeals has held that a motion or other request for disposition under the IAD does not substantially comply with the requirements of Article III(a) and (b) if said request was never delivered to the officials having custody of the defendant as required by Article III(b).[16] The failure to deliver the request to the person having custody of the defendant results in the request delivered to the prosecutor and the court failing to include the certification and information from prison officials specified in Article III(a).[17] Failure to comply with this requirement of Article III results in the failure to trigger the one hundred and eighty day time period.[18]

In his testimony at the evidentiary hearing on the present matter, the defendant testified that he gave a copy of the motion for speedy trial to the "warden's representative" at the Holliday Unit in Huntsville, Texas. However, there is no evidence, other than this self-serving testimony, to demonstrate that the defendant provided a copy of the motion for speedy trial to anyone other than the Clermont County Prosecutor's Office and the Clermont County Clerk of Courts. The court does not find this self-serving testimony to be credible. As such, the 180-day time period set forth under Article III was not triggered in May 2012 because the defendant failed to substantially comply with the requirements of Article III.

After communications between the Clermont County Prosecutor's Office and the Texas prison officials, the information required under Article III was received by the

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[15] *Owens* at ¶ 19.
[16] *Schnitzler* at *4. See also, *State v. Denniss* (July 17, 2009), 6th Dist. Nos. L-06-1361 and L-06-1380, 2009-Ohio-3498, ¶ 19 ("A defendant does not substantially comply if he sends a notice and request directly to the prosecution or appropriate court without first forwarding it to his warden in order to have the required accompanying certificate attached.").
[17] Id.
[18] Id.

prosecutor on October 1, 2012. Although it appears that these forms were provided due to discussions between the prosecutor and the Texas officials, and not by any notice or request given to the warden by the defendant himself, the court will find, noting that the IAD is to be liberally construed[19], that the 180-day time period would be triggered as of October 1st.

However, on September 27, 2012, the defendant was transferred out of the Texas state prison system to the Angelina County Jail to dispose of pending charges against him in that county. A sentence was imposed in that case on October 31st and the defendant was not returned from the Angelina County Jail until December 3rd. Federal case law, interpreting Article VI(a) of the IAD, holds that a defendant is "unable to stand trial" during the time that the defendant is involved in court proceedings in other jurisdictions.[20]

The court proceedings in the Angelina County case ended on October 31st, when the defendant was sentenced in that case. While another month passed until the defendant was returned to the Texas state prison system, the defendant had no control over the timely execution of the order to the Angelina County Sheriff to return the defendant to the state prison system. The state argues that the court should apply the rule that "where a person is being temporarily held in a county jail and has not yet entered a state correctional institution to begin a term of imprisonment, Article III cannot be invoked."[21] However, long before the defendant was transferred to Angelina County, he had already entered into the state prison system, making the above rule not entirely

[19] R.C. 2963.30, Article IX.
[20] See, e.g., *State v. Neal* , 564 F.3d 1351, 1354 (8th Cir.,2009); and *Netzley v. Gonzalez* (Sept. 17, 2009), C.D.Cal. NO. EDCV 08-1525-SJO, 2009 WL 3029755, *8.
[21] *Schnitzler* at *3.

on point. In keeping with the directive set forth by the Ohio Supreme Court that the time should not be "tolled for delays that were attributable to prison officials* * *," the court finds that the time from November 1st through December 3rd should not be attributed to the defendant. The court does find, however, that the 180 days was tolled during the period that the Angelina County court proceedings were pending (October 1st through October 31st). As such, the court finds that the IAD time began running as of November 1st.

One hundred and eighty days have not passed since November 1, 2012. As such, the state still has time to bring the defendant to trial within the time period required by Article III and there is no basis for dismissal of the present action.

Although it is not dispositive of the motion due to the court's conclusion above, the court notes for the record that the present motion to dismiss filed by the defendant also tolled the time under the IAD. "IAD speedy-trial time tolls in the same manner as time tolls under the Federal Speedy Trial Act."[22] A motion to dismiss generally tolls the time within which an accused must be brought to trial so long as the extension of time to rule on such a motion is reasonable.[23] The motion to dismiss was heard on February 20, 2013 and the present decision is being issued on March 18th, less than one month later and the court finds this to be a reasonable amount of time. The court finds that the 180-day time period was tolled from January 24th, when the defendant's motion to dismiss was filed, until March 18th, when the court is issuing the within decision on the motion.

[22] *State v. Coon* (March 15, 2012), 8th Dist. Nos. 97280 and 97281, 2012-Ohio-1057, ¶ 20, citing e.g., *United States v. Collins*, 90 F.3d 1420, 1426–1427 (9th Cir.1996).
[23] Id. at ¶ 21.

CONCLUSION

Based on the above analysis, the defendant's motion to dismiss is not well-taken and is hereby denied.

IT IS SO ORDERED.

DATED:_____ _____
Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 18th day of March 2013 to all counsel of record and unrepresented parties.

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Administrative Assistant to Judge McBride