IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
v.	)	ID No. 1108002188
	)	
WILLIAM BROWN,	)	
	)	
Defendant.	)	

OPINION

Date Submitted: January 23, 2017
Date Decided: April 10, 2017

Upon Defendant's Motion to Dismiss for Violation of the Interstate Agreement on Detainers: **GRANTED.**

Sean P. Lugg, Esquire (argued), and James J. Kriner, Esquire, Deputy Attorneys General, Delaware Department of Justice, 820 North French Street, 7th Floor, Wilmington, DE. Attorneys for the State.

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Jurden, P.J.

I. INTRODUCTION

Before the Court is Defendant William Brown's Motion to Dismiss for Violation of the Interstate Agreement on Detainers.[1] For the reasons that follow, Defendant's motion is **GRANTED.**

II. PROCEDURAL BACKGROUND

On July 2, 2012, Defendant William Brown, Jr. ("Brown") and co-defendant Earl Harris ("Harris") were indicted on capital murder charges.[2] At the time of indictment, Brown was incarcerated in Federal Correctional Institution ("FCI")-Cumberland for an unrelated conviction.[3] On July 15, 2013, the State advised the Court by letter that Brown was still incarcerated out-of-state and the Public Defender's Office ("PDO") had not yet assigned counsel.[4] In that same letter, the State expressed its desire to bring Brown to trial "in a timely fashion," and

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[1] "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 of another State." *New York v. Hill*, 528 U.S. 110, 111 (2000); *see also* 18 U.S.C. app. § 2. Puerto Rico and the U.S. Virgin Islands have also enacted the IAD. *State v. Pair*, 5 A.3d 1090, 1092 (Md. 2010). Delaware codified the IAD at 11 *Del. C.* §§ 2540–2550, referring to the statute as the "Uniform Agreement on Detainers" ("UAD"). Consequently, the terms "UAD" and "IAD" will be used interchangeably throughout this opinion, consistent with the terminology of the various courts cited herein.

[2] State v. William Brown, ID No. 1108002188, D.I. 1; State v. Earl Harris, ID No. 1108002195. The original indictment included numerous additional charges that were dismissed, with the acquiescence of the State, on March 15, 2016. D.I. 56. On August 15, 2016, the State informed the Court that it would no longer be seeking the death penalty in either case. D.I. 6, 106.

[3] D.I. 11, 28. FCI-Cumberland is located in Maryland. *See* D.I. 2. The State first advised the Court that Brown was incarcerated out-of-state on October 8, 2012. D.I. 8.

[4] D.I. 10.

requested appointment of counsel for defendants.[5] On July 26, 2013, the Court stated that counsel would need to be assigned before a scheduling conference could take place.[6] That same day, the PDO responded it could not conduct its conflict evaluation until: (1) Brown was in the custody of the Delaware Department of Correction ("DOC"); and (2) the State provided a witness list to the PDO.[7] On August 21, 2013, the PDO informed the Court that "the PDO's position remains as stated . . . [on July 26, 2013]. For the PDO to attend an office conference and represent the interests of individuals who have not sought our services would be an ethical breach."[8]

On March 27, 2014, the State filed a petition for writ of habeas corpus *ad prosequendum* ("Writ") to obtain Brown from federal custody.[9] On March 31, 2014, the Court issued a Writ to federal authorities for custody of Brown.[10] Before the State delivered the Writ to FCI-Cumberland, Brown was moved to another federal prison, FCI-McDowell.[11] On May 7, 2014, the State lodged a detainer against Brown with the Federal Bureau of Prisons.[12] On July 29, 2014, at the

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[5] *Id.*
[6] D.I. 65.
[7] *Id.*
[8] *Id.*
[9] D.I. 11.
[10] D.I. 12, 13.
[11] *See id.*
[12] D.I. 66.

State's request, the Court issued a Writ to FCI-McDowell.[13]

On August 12, 2014, the State withdrew the detainer lodged against Brown[14] in response to a "procedural request" from FCI-McDowell.[15] FCI-McDowell asked the State to clear the detainer "to then allow for Defendant Brown to be returned [to Delaware] pursuant to the writ."[16] The next day, August 13, 2014, the State returned Brown to Delaware.[17]

On August 15, 2014, a representative from the PDO interviewed Brown and determined he was eligible for representation.[18] On August 18, 2014, the PDO began representing Brown.[19] On October 31, 2014, the Court held an office conference during which the Court declared a conflict of interest between Brown and the PDO.[20] On November 13, 2014, the Court signed an order appointing conflict counsel.[21]

On March 2, 2015, the Court held an office conference and scheduled a trial date of October 4, 2016.[22] During that conference, and before the Court set the

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[13] D.I. 13.
[14] D.I. 118 Ex. C, Request for the Removal of Detainer.
[15] D.I. 139 at 18:11–15.
[16] *Id.*
[17] D.I. 14.
[18] D.I. 145.
[19] D.I. 113.
[20] D.I. 72.
[21] D.I. 18.
[22] D.I. 24.

trial date, the State represented that: (1) Brown had not been brought to Delaware under the Uniform Agreement on Detainers ("UAD" or "IAD");[23] and (2) the UAD does not apply in capital cases.[24]

On February 8, 2016, Brown moved to dismiss all counts of the indictment except for intentional murder based on the expiration of the statute of limitations.[25] On March 15, 2016, without opposition from the State, the Court granted Brown's Motion to Dismiss, except for two counts of felony murder and the unchallenged count of intentional murder.[26] Three days after the Court issued that decision, Brown's co-defendant Harris filed a Motion to Dismiss Counts III and IV of the Indictment ("Motion to Dismiss Counts III and IV of the Indictment") on Speedy Trial and Due Process grounds.[27] Brown joined Harris' motion.[28] On June 2, 2016, the Court denied Defendants' Motion to Dismiss Counts III and IV of the

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[23] *See supra* note 1.

[24] *Id.* The State stated, "[i]t turns out that we [did not] bring them back under the interstate agreement anyway, so there would not have been a time limit. . . . Apparently, by general acclimation the interstate agreement on detainers does not apply in capital cases. . . . There never would have been a time limit." *Id.* The State maintains that its erroneous representation as to the inapplicability of the UAD 120-day limit was based on "its understanding of the law at the time" the representation was made. State's Opening Brief at 17 ("State's Opening Br."). The State's erroneous understanding was derived from its Extradition Unit. *See* State's Opening Br. at 17–18. The Court accepts this as true, but notes that the State's ignorance of the law is no excuse. *See Correale v. U.S.*, 479 F.2d 944, 947 (1st Cir. 1973) ("Ignorance of the law is no excuse for the government, just as it avails not the defendant.").

[25] D.I. 42.

[26] D.I. 56. The Court dismissed Counts II and V–XIII of the indictment, leaving Count I (Intentional Murder) and Counts III and IV (Felony Murder). *Id.*; *see also* D.I. 1.

[27] Harris D.I. 63.

[28] D.I. 68.

Indictment.[29]

On August 4, 2016, the State, on its own initiative and in commendable adherence to its duty of candor to the tribunal, advised the Court and defense counsel by letter that it had erroneously represented that the UAD time limit did not apply in this case.[30] Citing *United States v. Mauro*,[31] the State acknowledged that "[w]hile neither defendant asserted claims [in the Motion to Dismiss Counts III and IV of the Indictment] concerning timeliness of their prosecution pursuant to the Uniform Agreement on Detainers . . . these provisions may apply here."[32] In response to this disclosure, Brown filed the instant Motion to Dismiss for Violation of the Interstate Agreement on Detainers.[33]

III. PARTIES' CONTENTIONS

Brown contends that the State violated the UAD by failing to bring him to

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[29] *State v. Brown*, 2016 WL 3356938, at *1 (Del. Super. June 2, 2016), *reargument denied sub nom. State v. Harris*, 2016 WL 4151609 (Del. Super. Aug. 3, 2016). The Court modified its June 2, 2016 Opinion on June 9, 2016 to correct a clerical error and to include additional details from the October 31, 2014 office conference. The transcript of that office conference was not available until after the Court had issued its June 2, 2016 Opinion. *Id.* at *7 nn.1, 31 & 35. The modified Opinion did not change the Court's ruling.

[30] D.I. 97.

[31] 436 U.S. 340 (1978).

[32] D.I. 97; *see also* Prof. Cond. R. 3.3(a) ("A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel . . . ."). Defense counsel and the Court were unaware of *Mauro* and its applicability to this case until the State sent its August 4, 2016 Letter.

[33] D.I. 113.

trial within 120 days of his arrival in Delaware and therefore the indictment must be dismissed.[34] Brown further argues that the State's erroneous belief that the UAD's time limit was inapplicable in his case does not constitute "good cause shown in open court"[35] to allow the State to prosecute this case after the expiration of the UAD's 120-day time limit.[36]

In opposition, the State submits three main arguments.[37] First, the State argues that the UAD's 120-day time limit does not apply in this case because the State withdrew the detainer on August 12, 2014, and Brown was transferred by Writ alone, outside of the UAD's purview.[38] In the alternative, the State contends that Brown waived the 120-day time limit when his counsel agreed to the October 4, 2016 trial date during the March 2, 2015 office conference.[39] Finally, the State argues that "good cause" exists under this specific set of circumstances such that trial may properly be held more than 120 days after Brown's arrival in Delaware.[40]

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[34] D.I. 135.
[35] 11 *Del. C.* § 2543(c).
[36] D.I. 135.
[37] During oral argument, the State implied that dismissal is improper because Brown did not seek to invoke the protections of the UAD until the State advised defense counsel of the potential applicability of *Mauro*. D.I. 139 at 47:1–21. This argument is wholly unavailing due to the State's erroneous representations to defense counsel (and the Court) at the March 2, 2015 Office Conference. *See supra* pp. 4–5.
[38] D.I. 118.
[39] *Id.*
[40] *Id.*

IV. DISCUSSION

A. The Uniform Agreement on Detainers

In 1969, the Delaware Legislature enacted the Uniform Agreement on Detainers ("UAD"),[41] which "is designed in part to protect the rights of prisoners who have outstanding detainers lodged against them by another jurisdiction."[42] The preamble elaborates that "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."[43] As such, the purpose of the UAD 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."[44]

Pursuant to the express language of 11 *Del. C.* § 2543(c), once the State has lodged a detainer and made a written request for temporary custody, it must bring the untried indictment, information, or complaint to trial within 120 days of the defendant's arrival in Delaware.[45] A detainer is "a request by the receiving state

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[41] 11 *Del. C.* §§ 2540–2550; *see also supra* note 1.
[42] *State v. Slaughter*, 152 A.3d 1275, 1280 (Del. Super. 2017) (citing 11 *Del. C.* § 2540).
[43] 11 *Del. C.* § 2540.
[44] *Id.*
[45] Alternatively, a prisoner against whom a detainer has been lodged may request final disposition of the charges rather than waiting for the State to file a written request for temporary

for the sending state to detain the prisoner or to send notification when the prisoner is about to be released."[46] Under the UAD, a detainer is distinct from a "written request for temporary custody."[47] The detainer serves to put officials in the sending State "on notice that the prisoner is wanted in another jurisdiction," whereas a "written request" represents "[f]urther action [which] must be taken by the receiving State in order to obtain the prisoner."[48]

Once the receiving State lodges a detainer against a prisoner with sending State prison officials, the UAD, by its express terms, becomes applicable and the receiving State must comply with its provisions.[49] The Court may toll the UAD's 120-day time limit upon a showing of good cause in open court in the presence of the defendant or the defendant's counsel.[50] If the State fails to bring the matter to trial within 120 days or within the time allowed by a properly sought and granted

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custody. 11 *Del. C.* § 2542. If a prisoner "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 imprisonment and the request for a final disposition to be made of the indictment," then the State has 180 days to bring the matter to trial. *Id.* The State and Brown do not contend that Brown made a § 2542 request for final disposition. Section 2543 governs this case.

[46] *Bruce v. State*, 781 A.2d 544, 548 n.3 (Del. 2001). Similarly, the United States Supreme Court has defined a detainer under the IAD as "a request by the State's criminal justice agency that the institution in which the prisoner is housed to hold the prisoner for the agency or notify the agency when release is imminent." *Hill*, 528 U.S. at 112.

[47] *Mauro*, 436 U.S. at 360–61.

[48] *Id.* at 358.

[49] *Id.* at 361–62.

[50] 11 *Del. C.* § 2543(c).

continuance, the UAD requires that the matter be dismissed with prejudice.[51] The burden of compliance with the procedural requirements of the UAD rests upon the State.[52]

B. *United States v. Mauro*

United States v. Mauro is more than instructive here; it is dispositive. In *Mauro*, the United States Supreme Court addressed the scope of the government's obligations under the IAD and, in particular, whether a writ of habeas corpus *ad prosequendum* could constitute a detainer or "written request" within the meaning of the IAD.[53]

The United States Supreme Court held that when a State files a detainer against a prisoner and then obtains custody of that prisoner by means of a writ of habeas corpus *ad prosequendum*, the writ constitutes a "written request" within the meaning of the IAD.[54] Once the detainer is lodged, the IAD by its express terms becomes applicable, and the State must comply with its provisions.[55] The United

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[51] *Id.* § 2544(c) ("[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 § 2542 or § 2543 of this title, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending *shall enter an order dismissing the same with prejudice* . . .") (emphasis added).

[52] *Pittman v. State*, 301 A.2d 509, 514 (Del. 1973) ("The burden of compliance with the procedural requirements of the IAD rests upon the party states and their agents."), *superseded on other grounds by statute*, 11 *Del C.* § 2542(g).

[53] *Mauro*, 436 U.S. at 344.

[54] *Id.* at 361–62.

[55] *Id.*

States Supreme Court's ruling is clear: "whenever the receiving State initiates the disposition of charges underlying a detainer it has previously lodged against a state prisoner," the IAD requires commencement of trial within 120 days of the defendant's arrival in the receiving State.[56] Given the import of *Mauro* to this case, the Court finds it necessary to review *Mauro*'s facts and procedural history.

One of the two cases before the Supreme Court in *Mauro* is directly on point.[57] In that case, Richard Ford, who was incarcerated at a state prison in Massachusetts, was charged with bank robbery by the federal government ("Government") in the Southern District of New York.[58] Federal officials lodged a federal bank robbery warrant as a detainer against Ford with Massachusetts state prison authorities.[59] After Ford was convicted in Massachusetts, the Government requested and received custody of Ford pursuant to a writ of habeas corpus *ad prosequendum*.[60] The New York proceedings were adjourned for two weeks, at which time the District Court set a trial date of May 28, 1974.[61] The New York trial, however, was postponed five separate times, either at the request of the Government or on the District Court's own initiative.

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[56] *Id.* at 363–64.
[57] *Id.* at 345 (citing *United States v. Ford*, 550 F.2d 732, 736 (2d Cir. 1977), *cert. granted*, 434 U.S. 816 (Oct. 3, 1977) (No. 77-52)).
[58] *Id.* at 345–46.
[59] *Id.* at 346.
[60] *Id.*
[61] *Id.*

While awaiting the New York trial, Ford requested to be returned to the Massachusetts state prison. The Government transferred Ford into Massachusetts' custody, and during that time, Massachusetts denied Ford furlough privileges due to the outstanding federal detainer lodged against him.[62] On August 8, 1975, the Government brought Ford back to New York to stand trial by means of a second writ of habeas corpus *ad prosequendum*.[63] The Government finally brought Ford to trial on September 2, 1975—well after the IAD's 120-day time limit had expired.[64] The jury found Ford guilty on all counts.[65]

Following trial, Ford appealed to the Second Circuit Court of Appeals, asserting that the charges against him should have been dismissed under the IAD because Ford was not tried within 120 days of his initial arrival in New York.[66] The Second Circuit held that because the Government lodged a detainer against Ford, the IAD governed Ford's situation.[67] Moreover, according to the Second Circuit, the writ of habeas corpus *ad prosequendum* used to bring Ford to New

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[62] *Id.* at 347.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.* at 348. Ford asserted a second basis for his appeal, arguing that dismissal of his case was warranted because the Government also violated Article IV(e) of the IAD by returning him to Massachusetts state prison without first trying him on the federal charges. *Ford*, 550 F.2d at 742. The Second Circuit Court of Appeals found that Ford waived his objection to Article IV(e) by requesting the transfer to Massachusetts, and instead dismissed his case based on the violation of the speedy trial provisions of Article IV(c). *Id.* at 743–44.
[67] *Mauro*, 436 U.S. at 348 (citing *Ford*, 550 F.2d at 736).

York qualified as a "written request for temporary custody or availability" within the meaning of Article IV(a) of the IAD.[68] Accordingly, the Second Circuit dismissed Ford's indictment with prejudice.[69]

The Government appealed to the United States Supreme Court, arguing that the phrase "written request for temporary custody" in the IAD was not intended to include writs of habeas corpus *ad prosequendum*. First, the Government argued that the 30-day waiting period imposed by Article IV(a) of the IAD,[70] during which the governor of a sending State may disapprove a request for temporary custody, would permit a State to disregard a federal court's order (e.g., writ of habeas corpus *ad prosequendum*), contrary to the Supremacy Clause. Second, the Government argued that Article IV(c) of the IAD,[71] which imposes the speedy trial

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[68] *Id.* (citing *Ford*, 550 F.2d at 743).

[69] *Ford*, 550 F.2d at 744.

[70] 18 U.S.C. app. § 2 Art. IV(a) provides: "The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated: *Provided*, That the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request: *And provided further*, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner."

[71] *Id.* § 2 Art. IV(c) provides: "In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but 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."

requirement, only applies to "proceeding[s] made possible by this article," and when a prisoner is brought before a district court by means of a writ of habeas corpus *ad prosequendum*, the subsequent proceedings are not "made possible" by Article IV of the IAD because writs of habeas corpus *ad prosequendum* were used to obtain prisoners from other jurisdictions long before the enactment of the IAD.[72]

The Supreme Court rejected both arguments. First, the Supreme Court found that the Article IV(a) did not expand the rights of sending States to dishonor federal court orders; rather, it was "meant to do no more than preserve previously existing rights of the sending States."[73] Therefore, the Supreme Court held that Article IV(a) was not inconsistent with the Supremacy Clause.[74] Second, the Supreme Court adopted a broad definition of "written request," reasoning that "[a]ny other reading of [Article IV(c)] would allow the Government to gain the advantages of lodging a detainer against a prisoner without assuming the responsibilities that the [IAD] intended to arise from such an action."[75]

The Supreme Court explained in *Mauro*:

> Once the Federal Government lodges a detainer against a prisoner with state prison officials, the [IAD] by its express terms becomes applicable and the United States must comply with its provisions. And once a detainer has been lodged, the United States has

[72] *Mauro*, 436 U.S. at 362–64.
[73] *Id.* at 363.
[74] *Id.*
[75] *Id.* at 363–64.

> precipitated the very problems with which the [IAD] is concerned. Because at that point the policies underlying the [IAD] are fully implicated, we see no reason to give an unduly restrictive meaning to the term "written request for temporary custody." It matters not whether the Government presents the prison authorities in the sending State with a piece of paper labeled "request for temporary custody" or with a writ of habeas corpus *ad prosequendum* demanding the prisoner's presence in federal court on a certain day; in either case the United States is able to obtain temporary custody of the prisoner. Because the detainer remains lodged against the prisoner until the underlying charges are finally resolved, the [IAD] requires that the disposition be speedy and that it be obtained before the prisoner is returned to the sending State. The fact that the prisoner is brought before the district court by means of a writ of habeas corpus *ad prosequendum* in no way reduces the need for this prompt disposition of the charges underlying the detainer. In this situation it clearly would permit the United States to circumvent its obligations under the [IAD] to hold that an *ad prosequendum* writ may not be considered a written request for temporary custody.[76]

Accordingly, the Supreme Court affirmed the Second Circuit's dismissal of Ford's indictment.[77]

C. Analysis

The State's contention that Brown was not brought to Delaware under the UAD because the State withdrew the detainer prior to Brown's transfer is incorrect. Under 11 *Del. C.* § 2543, the UAD time limit, once triggered by the lodging of a detainer and the presentation of a written request by the State, "cannot be subverted by the withdrawal of the detainer without the accompanying

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[76] *Id.* at 361–62.
[77] *Id.* at 365.

resolution of the underlying charges."[78] The State lodged a detainer against Brown on May 7, 2014.[79] The Writ issued on July 29, 2014 constituted a "written request" for custody under the UAD.[80] Under the plain language of 11 *Del. C.* § 2543(a), the State's lodging of the detainer and subsequent presentation of the Writ triggered the UAD's provisions. The withdrawal of the detainer on the day prior to Brown's transfer to Delaware did not operate to remove this case from the purview of the UAD.

Once the 120-day UAD time limit was triggered on August 13, 2014 (the day Brown was returned to Delaware), the State was required to bring Brown to trial, establish good cause in open court to obtain a continuance, or dismiss the charges, within 120 days.[81] By December 11, 2014, Brown had already been in Delaware for 120 days. As of that date, the State had not brought Brown to trial, sought a continuance for good cause in open court, or dismissed the charges

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[78] *Pitts v. State*, 45 A.3d 872, 883 (Md. Ct. Spec. App. 2012) ("[T]he provisions of the IAD, *once properly invoked in response to a valid detainer*, cannot be subverted by the withdrawal of the detainer without the accompanying resolution of the underlying charges."); *see also United States v. Donaldson*, 978 F.2d 381 (7th Cir. 1992) (holding that withdrawal of detainer in tandem with dismissal of the underlying charges effectively removed the defendant from the purview of the IAD); *People v. Robertson*, 56 P.3d 121, 123 (Colo. App. 2002) ("We conclude that the withdrawal of the detainer does not change the fact that a detainer 'has been lodged.'"); *State v. Tarrant*, 772 N.W.2d 750, 756–57 (Wis. Ct. App. 2009) (agreeing with the *Robertson* court that "the withdrawal of the detainer must be accompanied by the dismissal of the charges if the time limits of the IAD are to be avoided").

[79] D.I. 66.

[80] *See Mauro*, 436 U.S. at 361.

[81] *See* 11 *Del. C.* § 2543(c).

against him. Thus, as of December 12, 2014, the UAD mandated dismissal of the charges against Brown with prejudice.[82]

This is not a case where the defendant obscured the applicability of the UAD or "avoid[ed] clear objection until the clock ha[d] run."[83] At oral argument on this motion, the Court asked the State if it could identify anything in the record that would suggest Brown or his co-defendant were "gaming the system" or "lying in wait" for the 120-day limit to expire.[84] The State responded that it could not identify any such evidence.[85]

Relying on *New York v. Hill*,[86] *Bruce v. State*,[87] and *Davis v. State*,[88] the State maintains that Brown waived the UAD's 120-day time limit by agreeing to a

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[82] *See id.* § 2544(c). By March 2, 2015, the day of the office conference during which the October 4, 2016 trial date was set, Brown had been in Delaware for 202 days. The Court notes that Brown's lack of legal representation between August 13, 2014 and August 18, 2014 may have tolled the UAD's 120-day time limit for five days. *See* 11 *Del. C.* § 2545(a) ("In determining the duration and expiration dates of the time periods provided in §§ 2542 and 2543 of this title, the running of the 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."); *Bruce*, 781 A.2d at 548, 550. However, even assuming the time limit was tolled for five days, the March 2, 2015 office conference transpired 197 days after Brown arrived in Delaware and was able to stand trial—well after the expiration of the 120-day time limit.

[83] *See Reed v. Farley*, 512 U.S. 339, 349 (1994) (discussing federal habeas review: "When a defendant obscures Article IV(c)'s time prescription and avoids clear objection until the clock has run, cause for collateral review scarcely exists.").

[84] D.I. 139 at 81:2–12.

[85] *Id.* at 81:13–14.

[86] 528 U.S. 110 (2001).

[87] 781 A.2d 544 (Del. 2001).

[88] 2004 WL 3021168 (Del. Dec. 30, 2004).

trial date outside of that limit.[89] The State's reliance on these cases is misplaced. In *Hill*, the United States Supreme Court held that a defendant waived his rights under the IAD because, *before the IAD time limit expired*, he agreed to a trial date outside of the time limit.[90] In *Bruce* and *Davis*, a continuance for good cause was sought and granted *before the applicable UAD time limit expired.*[91] In relying on *Hill*, *Bruce*, and *Davis*, the State overlooks the key fact that, here, the 120-day limit had already expired by the time the October 4, 2016 trial date was set.[92]

Alternatively, the State argues that the Court should find, after-the-fact, that "good cause" existed under the UAD to hold trial more than 120 days after Brown's return to Delaware.[93] But the State is unable to cite to any case in which a Delaware court has retroactively determined that "good cause" existed to grant a continuance sought *after the expiration of the applicable UAD time limit.*[94]

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[89] D.I. 118.
[90] 528 U.S. at 116, 118.
[91] 781 A.2d at 548–50; 2004 WL 3021168, at *1.
[92] *See supra* note 82 and accompanying text.
[93] D.I. 118.
[94] While the Court has not found any Delaware authority that expressly rejects after-the-fact consideration of whether "good cause" existed for a continuance sought after the expiration of the UAD time limit, the Court has identified two cases in which the Court had the opportunity to engage in such a determination, but declined to do so.

First, in *State v. Edney*, the Superior Court stated, "The State has the same information defendant's attorney had and could have asked for a continuance before the 180 days had expired thereby giving the Court the opportunity to decide whether good cause existed." 1998 WL 437149, at *2 (Del. Super. May 13, 1998). In so stating, the Court implied that it would be improper to conduct an after-the-fact "good cause" determination when a continuance is sought

The United States Supreme Court has not opined on this issue,[95] but courts in other jurisdictions have, expressly declining to conduct the type of after-the-fact "good cause" determination the State seeks here. For example, in *Commonwealth v. Fisher*,[96] the Supreme Court of Pennsylvania reversed a defendant's conviction because the prosecutor requested a continuance one day after the expiration of the UAD time limit, in violation of the UAD, even though the prosecutor "might arguably have had good cause to obtain a continuance."[97] In *State v. Patterson*,[98] the Supreme Court of South Carolina held that the trial court had no discretion to grant a continuance after the applicable 180-day time limit had expired.[99] In *State v. Smith*,[100] a Missouri Court of Appeals declined to consider whether good cause existed to grant a continuance request made outside the applicable time limit, finding that the trial court's granting of the continuance violated the defendant's

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after the UAD time limit has expired. *See id.*

Second, in *State v. Malcolm*, while the Superior Court did not expressly reject the State's invitation to find that the Court should retroactively hold that "the case was, in essence, continued for good cause," it dismissed the case because the trial was not held within the timeframe required by the UAD, and the failure to do so was not attributable to the defendant. Del. Super., ID Nos. K93-02-0367–0383 and K93-04-0241–0367, Ridgely, P.J. (Jan. 9, 1998) (Motion to Dismiss Oral Argument Transcript) at 6:3–11, 9:21–10:4.

[95] *See Fex v. Michigan*, 507 U.S. 43, 51 n.5 (1993) ("Some courts have held that a continuance must be requested and granted before the 180-day period has expired. . . . We express no view on this point.").

[96] 301 A.2d 605, 608 (Pa. 1973).

[97] *Id.*

[98] 256 S.E.2d 417, 418 (S.C. 1979).

[99] *Id.*

[100] 686 S.W.2d 543, 549 (Mo. Ct. App. 1985).

rights under the UAD.[101] Given the foregoing authorities, the Court is not persuaded by the two cases identified by the State as opposing authority,[102] and declines to follow them.[103]

In light of the express language of the UAD, the relevant case law, and the facts and procedural history presented in this case, the Court will not engage in an after-the-fact analysis to determine whether good cause existed for a continuance where the continuance was not sought within the time period required by the UAD.

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[101] *Id.*

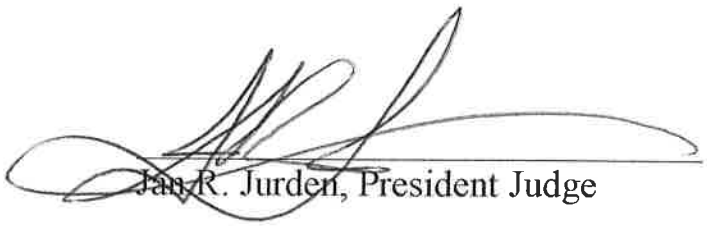
[102] In support of its argument, the State cites two cases—*State v. Lippolis*, 257 A.2d 705, 707 (N.J. Super. 1969), *rev'd*, *State v. Lippolis*, 262 A.2d 203 (N.J. 1970), and *Phillips v. State*, 695 S.W.2d 388, 390 (Ark. Ct. App. 1985)—in which courts have made after-the-fact determinations that good cause existed to grant continuances first requested after the applicable time limit had expired.

[103] This Court is not the only court to decline to do so. *See, e.g.*, *Patterson*, 256 S.E.2d at 418; *Fisher*, 301 A.2d at 607–08.

V. CONCLUSION

The language of the UAD is clear, as is the United States Supreme Court's holding in *Mauro*. Given what transpired here, the Court has no discretion. Dismissal with prejudice is mandated due to the State's failure to comply with the UAD.[104] Defendant William Brown's Motion to Dismiss for Violation of the Interstate Agreement on Detainers is **GRANTED.**

IT IS SO ORDERED.



Jan R. Jurden, President Judge

[104] The Court recognizes the gravity of this consequence because a defendant who may be guilty of a very serious crime will go free. But this is the consequence required by law. The Court simply has no discretion to rule otherwise. *See Birdwell v. Skeen*, 765 F. Supp. 1270, 1275 (E.D. Tex. 1991), *aff'd*, 983 F.2d 1332 (5th Cir. 1993) ("Non-discretionary dismissal with prejudice of all pending charges against a defendant is a severe sanction, and evidences a strong desire to ensure prompt disposition of cases. It seems highly unlikely that forty-six states, the United States, and the District of Columbia would agree to such an absolute penalty without carefully considering both the penalty and the importance of the time limit. In light of the scrutiny that must have been visited upon [provisions of] the IAD, they shall be assumed to mean exactly what they say.").