

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0648

STATE OF MONTANA,

Plaintiff and Appellee,

v.

WILLIAM JEROME CARNES,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Second Judicial District Court,
Silver Bow County, The Honorable Kurt Krueger, Presiding

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STATEMENT OF THE ISSUES

1. Whether Appellant waived the right to appeal his pretrial motion to dismiss when he pled guilty.
2. If Appellant reserved his right to appeal, whether the district court erred when it denied his motion to dismiss for an alleged failure to comply with the Interstate Agreement on Detainers.

STATEMENT OF THE CASE

Butte-Silver Bow Law Enforcement arrested Appellant William Carnes (Carnes) for Driving Under the Influence of Alcohol or Drugs (DUI), fourth offense, Resisting Arrest, and Driving Without a Valid Liability Insurance Policy in Effect. (Doc. 5.) Butte attorney Frank Joseph (Joseph) filed a notice of appearance shortly after Carnes' arrest. (Doc. 2 at 4.) The district court initially set trial to begin on June 24, 2019. (Doc. 14.)

Carnes failed to appear at the June 11, 2019 final pretrial conference and the court issued a warrant for his arrest. (Doc. 16.) Carnes was arrested on July 2, 2019, in Douglas County, Nevada, on charges of a violation of Duty to Stop at Scene of Crash Involving Death or Personal Injury, a violation of Nev. Rev. Stat. § 484E.010. (Docs. 19, 36.) Carnes was served with the Montana warrant the day after his arrest on the new charges in Nevada. (Doc. 16.)

While incarcerated at the Nevada Department of Corrections (Nevada DOC), Carnes filed several motions in his Montana case, one of which he filed on August 10, 2020, titled a “Motion for Speedy Trial or in the Alternative Dismissal for Lack of Speedy and Timely Prosecution” (hereafter the “August 10, 2020 Motion to Dismiss”). (Doc. 19.) The State responded to Carnes’ August 10, 2020 Motion to Dismiss, stating that “[i]f [Carnes] wishes to assert his rights to a speedy trial while in custody in Nevada, he must follow the appropriate procedure as set forth [in Mont. Code Ann. § 46-31-101, et. seq.],” also known as the Interstate Agreement on Detainers (IAD). (Doc. 20.)

The district court denied Carnes’ motion without a hearing, agreeing with the State that Carnes had not met the statutory requirements of the IAD. (Doc. 21.) After the court denied Carnes’ motion, Carnes moved the court to appoint him a public defender. (Doc. 26.) The court granted Carnes’ motion and counsel Joshua Demers (Demers) entered the case on January 11, 2021. (Doc. 31.)

On February 12, 2021, Demers filed a “Motion to Dismiss: In Accordance with Interstate Agreement on Detainers” (hereafter the “February 12, 2021 Motion to Dismiss”). (Doc. 33.) Demers argued the State had violated the IAD by not bringing Carnes to trial within 180 days of him filing his August 10, 2020 Motion to Dismiss. (*Id.*) The district court denied Carnes’ motion following an oral

argument, where Carnes did not testify or produce any other evidence. (Doc. 51; *see* 6/30/21 Hr’g Tr.)

The State and Carnes then reached a plea agreement, which contemplated Carnes receiving a significant benefit via the State amending the charges to one count of Criminal Endangerment. (Doc. 60.) After Carnes pled guilty, the court sentenced him to the Department of Corrections for five years, all suspended other than what he had already served on the Montana warrant while in the custody of the Nevada DOC. (Doc. 64.) Carnes now appeals the denial of his February 12, 2021 Motion to Dismiss.

STATEMENT OF THE FACTS

On October 22, 2018, at approximately 11:00 a.m., Butte-Silver Bow Law Enforcement Sergeant Russ Robertson and Officer Ryan Fallang were dispatched to the Comfort Inn in Butte to investigate a suspected drunk driver. (Doc. 1 at 2.) Upon arriving at the Comfort Inn, the officers encountered Carnes. (*Id.*) Carnes smelled of alcohol, was slurring his words, had bloodshot and glassy eyes, and admitted to drinking. (*Id.*) Carnes claimed he was staying at the Comfort Inn, but the officers found out that was not true. (*Id.* at 3.) The officers attempted to place Carnes under arrest on suspicion of DUI, but Carnes pulled away and resisted the arrest until the officers were able to subdue him by taking him to the ground. (*Id.*)

At the detention center, Carnes refused to cooperate with further testing, but agreed to provide a blood sample. (Doc. 1 at 3.) On the way to the hospital, Carnes was belligerent with the officers, but eventually calmed down. (*Id.* at 4.) Carnes was charged with a felony DUI because he had three prior DUI convictions. (*Id.*)

Soon after his arrest, Carnes hired Joseph as his attorney. (Doc. 2.) After bonding out of jail, Carnes returned to his home in Nevada. (Doc. 8.) Joseph moved the district court to continue his initial appearance on the charges because Carnes lacked the funds to travel back to Montana. (*Id.*) Carnes made his initial appearance in the district court on March 21, 2019. (Doc. 10.) At the hearing, the court advised Carnes of his constitutional rights. (3/21/19 Hr'g. Tr. at 5.)

Following the advisement of rights, the court asked Carnes if he needed additional time to consider what plea he wanted to enter. (3/21/19 Hr'g. Tr. at 5.) Joseph advised the court that Carnes did not need additional time. (*Id.*) Unprompted, the court then erroneously advised Carnes: "You may appeal any of the pretrial rulings following a guilty plea." (*Id.*) It is unclear why the court made this advisement, especially since there were no pretrial rulings pending. Carnes then pled not guilty to the charges. (*Id.* at 6.)

On June 11, 2019, Carnes failed to appear at his final pretrial conference. (Doc. 16.) Consequently, the court issued a bench warrant for his arrest. (*Id.*) The warrant was served on Carnes on July 3, 2019, in Douglas County, Nevada, after

his arrest for failing to stop at the scene of an accident involving bodily injury or death. (*Id.*)

Carnes appears to have been sentenced on that offense in October 2019 and then incarcerated at the Southern Desert Correctional Center in Indian Springs, Nevada. (Doc. 19, Add. 1C, 1E.) While incarcerated, and despite being represented by counsel, Carnes began to file pro se motions in his Montana case. (*See* Docs. 17, 19.)

Carnes' first motion was filed on August 3, 2020, and was titled a motion for "Summary Judgment in favor of defendant to Remove negligent Criminal Charges from Butte, Montana per motion filed 4/23/20." (Doc. 17.) The summary judgment motion was captioned to be filed in the district court in Douglas County, Nevada, but was filed in Silver Bow County. (*Id.*) The motion referenced a separate "Motion to Quash Warrent [sic] & Fines; or in the Alternative Sentence in Absentia to Concurrent Term," which was the motion referenced in the caption and supposedly filed on April 23, 2020. (*Id.*) The April 23, 2020 motion was not filed in Silver Bow County, but was attached as an addendum to Carnes' subsequent August 10, 2020 Motion to Dismiss. In the August 3, 2020 motion, Carnes alleged that the Nevada DOC was denying him access to prison programs due to the outstanding Montana warrant. (*Id.*)

On August 10, 2020, Carnes filed his August 10, 2020 Motion to Dismiss. (Doc. 19.) In his motion, Carnes cited his right to a speedy trial under the Sixth Amendment to the United States Constitution and the right to a trial within 60 days of arrest for a misdemeanor in Nevada. (*Id.* at 2.) Carnes stated he would be incarcerated for 72 months in Nevada and he could not transport himself to Montana to face the charges here. (*Id.* at 3.) Carnes articulated that he believed it was the duty of the State of Montana to “execute the command” of the Montana warrant and requested that Montana officials transport him back to Butte for the disposition of his charges. (*Id.*)

Carnes attached several addendums to his August 10, 2020 Motion to Dismiss. (Doc. 19.) The first addendum was a copy of the Montana bench warrant. (*Id.*, Add. 1A.) The second addendum was a letter from Joseph to Carnes wherein Joseph explained to Carnes that the outstanding Montana warrant would remain in place until Carnes returned to Montana to address the charges. (*Id.*, Add. 1B.) Joseph advised Carnes that his initial \$750 retainer was exhausted and would have to be replenished prior to a trial. (*Id.*) Nevertheless, Joseph told Carnes to advise him if there was any additional information that he might need. (*Id.*) In the letter, Joseph did not tell Carnes that he was no longer acting as his attorney. (*See id.*)

The third addendum was a “Verification of Incarceration” form filled out by a “Correctional Caseworker” identified as “R. Brice.” (Doc. 19, Add. 1C.) The

verification stated that Carnes had been sentenced to 24-72 months, that the sentence would expire on August 7, 2022, and that his earliest release date was July 1, 2021. (*Id.*)

The fourth addendum was a letter to Carnes from the Butte City Court, dated January 22, 2020, responding to a letter Carnes had sent, which indicated that Carnes did not have any cases pending in Butte-Silver Bow County.¹ (Doc. 19, Add. 1D.) The fifth addendum was the “Motion to Quash Warrants &/or Fines; or in the Alternative Sentence in Absentia to Concurrent Term” that Carnes referenced in his August 3, 2020 motion. (*Id.*, Add. 1E.)

The motion to quash was addressed to the Silver Bow County District Court. (Doc. 19, Add. 1E.) The motion indicated it was filed on January 22, 2020, however, it does not appear that it was filed in the Silver Bow County District Court, and it is not clear where it was filed.² (*See* Doc. 000, Register of Actions.) In the attached motion to quash, Carnes requested that the charges against him be dismissed or for the court to “enter a concurrent jail term in ‘absentia.’” (Doc. 19, Add. 1E.) The motion also contained language indicating Carnes was invoking “Article III of the I.A.D.” (*Id.*, Add. 2E.) Addendum E itself had an attached form

¹ It is not clear why the clerk of the Butte City Court would tell Carnes he did not have any charges pending in the Silver Bow County District Court.

² In his February 12, 2021 Motion to Dismiss, Carnes represented that the January 22, 2020 filing stamp was from the Nevada DOC. (Doc. 33 at 2.)

that was addressed to the “District Attorney, Butte Montana” and stated that Carnes was incarcerated, that he had been sentenced on October 2, 2019, to a term of 24 to 72 months with a “Tentative Release Date/Minimum Eligible Parole Date of 6/1/22.” (*Id.*, Add. 3E.)

The State responded to Carnes’ August 10, 2020 Motion to Dismiss on August 18, 2020. (Doc. 20.) The State noted that Carnes’ motion appeared to be a general assertion of his rights to a speedy trial. (*Id.* at 2.) The State further averred that the Montana warrant would “serve as [a] detainer for the Defendant and this jurisdiction can proceed once the Defendant has served his sentence in Nevada.” (*Id.*) Given the lack of clarity in Carnes’ motions, the State pointed out that “[i]f the Defendant wishes to assert his rights to a speedy trial while in custody in Nevada, he must follow the appropriate procedure as set forth by Montana Statute.” (*Id.*)

The State then advised Carnes of the relevant statute and its requirements. (Doc. 20 at 2-3.) The State argued Carnes had not attached the appropriate certificate required by Mont. Code Ann. § 46-31-101, with information on his term of commitment, time already served, time remaining, amount of good time earned, time of parole eligibility, and any decisions from the parole board. (*Id.* at 3.) The State further noted Carnes had not complied with the appropriate procedure, which required him to send his request to the Nevada DOC officials, who were then

required to send the request via registered or certified mail with the appropriate certificate to the Montana authorities. (*Id.*)

On September 4, 2020, the district court agreed with the State and denied Carnes' August 10, 2020 Motion to Dismiss. (Doc. 21.) The court advised Carnes that he "must follow the procedure set forth by the State of Montana pursuant to § 46-31-101 of the Montana Code Annotated." (*Id.*)

After receiving the court's order denying his motion to dismiss, Carnes filed a motion seeking the appointment of a public defender to his case. (Doc. 26.) In his motion, Carnes incorrectly stated that Joseph had withdrawn from his case. (*Id.* at 5.) In fact, Joseph had not withdrawn and was still Carnes' counsel of record. (*See* Doc. 000, Register of Actions.) On December 23, 2020, the court granted Carnes' motion and appointed the Office of the Public Defender to represent Carnes. (Doc. 28.)

Demers never filed a notice of appearance but did file a motion for the production of evidence on January 11, 2021. (Doc. 31.) In the months following the court's denial of Carnes' August 10, 2020 Motion to Dismiss, neither Carnes nor Demers attempted to remedy the statutory deficiencies with Carnes' IAD request. Instead, over five months after the court's order identifying the noncompliance, Carnes filed his February 12, 2021 Motion to Dismiss, claiming the State had violated the IAD by failing to hold a trial within 180 days of Carnes

filing his August 10, 2020 Motion to Dismiss. (Doc. 33 at 2-3.) In his motion, Carnes acknowledged that his August 10, 2020 Motion to Dismiss was “an improper pro se motion to dismiss for lack of speedy trial” (*Id.* at 2.)

The State responded and again argued that Carnes had yet to follow the appropriate procedure and obtain the appropriate paperwork from the Nevada DOC. (Doc. 34.) In his reply brief, Carnes claimed he had not been unable to get the appropriate paperwork due to a miscommunication between officials in Nevada and Montana that led Nevada officials to believe the Montana action was a parole violation warrant instead of a pretrial warrant. (Doc. 35 at 2.)

However, Demers stated he was able “to quickly clear up the record issue with the Nevada Department of Corrections” and, soon thereafter, was able to obtain the appropriate certificate from Nevada as required by the IAD. (*See* Doc. 36 at 1, Ex. C.) Demers filed the certificate with the court on March 2, 2021, after his February 12, 2021 Motion to Dismiss was fully briefed. (*Id.*) Carnes argued that the correct certificate only contained information that was previously known to the State. (*Id.* at 1.)

At oral argument on the motion to dismiss, Carnes acknowledged that he had not requested the appropriate remedy in his August 10, 2020 Motion to Dismiss. (6/30/21 Hr’g Tr. at 5-7.) Rather, Carnes argued that the State should have construed the motion to be filed under the IAD because the attachments to the

motion contained most of the information that would have been contained in an IAD request. (*Id.* at 7.) Demers repeated that he had contacted the Nevada DOC and learned of the misunderstanding surrounding the Montana warrant. (*Id.*)

Demers stated that “[o]nce the warrant was clarified by myself with the Nevada Department of Corrections, they immediately started the procedures and the procedures started immediately, but Mr. Carnes while incarcerated in Nevada had no ability to access that paperwork or to access the appropriate exact documents to send to the State until Nevada sent it to him because he was in prison custody.” (6/30/21 Hr’g Tr. at 7.) Demers stated that he sent an IAD request to the Nevada DOC on February 10, 2020 and received a response with the correct paperwork on February 16, 2020. (*Id.* at 17.)

Although it appears Demers was able to easily obtain the appropriate certificate from the Nevada DOC, Carnes argued that he, in fact, was not required to do anything under the IAD. (6/30/21 Hr’g Tr. at 8-12.) Rather, Carnes believed that once the State learned he was being held in another state, it was entirely incumbent upon the State of Montana to research Carnes’ custodial status and arrange for him to be extradited back. (*Id.* at 9.)

The State responded that the IAD process puts “the burden and the obligation on the defendant” to properly file an IAD request. (6/30/21 Hr’g Tr. at 12.) The State noted that it had “bolded” in its response to Carnes’ August 10,

2020 Motion to Dismiss “exactly what he needed to do” to comply with the IAD, but that Carnes had not followed the statute. (*Id.* at 12-13.) Instead of following the correct procedure, Carnes waited until 180 days had passed from the time he filed his August 10, 2020 Motion to Dismiss to file his February 12, 2021 Motion to Dismiss, alleging the State violated the IAD.

Following the hearing, the district court issued a written order denying Carnes’ February 12, 2021 Motion to Dismiss. (Doc. 51.) The district court reasoned that Carnes had given “improper notice” in his August 10, 2020 Motion to Dismiss, which was insufficient to trigger the IAD. (*Id.* at 2.)

Prior to trial, the State and Carnes reached a plea agreement. (Doc. 60.) The agreement contemplated a significant benefit to Carnes in that the State agreed to amend the charges to one count of Criminal Endangerment and to suspend any unserved portion of the sentence. (*Id.* at 2, 4.) The plea agreement also contained a waiver of rights, wherein Carnes acknowledged the rights he was surrendering by pleading guilty. (*Id.* at 2-3.) Carnes further acknowledged that he understood the rights he was waiving and that his attorney had explained those rights to him. (*Id.* at 3.) Although the waiver did not reference that Carnes was waiving his right to appeal, he also did not preserve his right to appeal through the agreement. (*See id.*) The plea agreement explicitly stated the following:

This plea agreement constitutes the entire agreement between the parties. Any term or condition which is not expressly stated as part of this Pre-Trial Agreement is not to be considered part of the agreement.

(*Id.* at 9.)

At the change of plea hearing, the court reviewed with Carnes the rights he was waiving by entering a guilty plea. (10/14/21 Hr’g Tr. at 5-6.) As part of the waiver of rights colloquy, the court asked Carnes: “Do you understand that by pleading guilty, you’re giving up your right to appeal your conviction?” (*Id.* at 7.) Carnes replied by asking: “What’s appeal?” (*Id.*) The court appears to have misunderstood Carnes’ response as the court simply moved on to the next unrelated question. (*See id.*)

Neither Carnes nor his attorney sought clarification or claimed that Carnes would be preserving his right to appeal. (*See* 10/14/21 Hr’g Tr. at 5-7.) The court reviewed with Carnes all the rights he was waiving via his guilty plea. (*Id.*) Following the colloquy of rights, the court, Carnes, and Demers had the following conversation:

[Court]: Have you discussed—have you discussed the consequences of a guilty plea with your attorney?

[Carnes]: Yes.

[Court]: Are there any communication problems between you and your client?

[Demers]: I’m sorry, is that for me, your Honor?

[Court]: I'm sorry. Are there any communication problems between you and your attorney?

[Carnes]: No, sir. No, your Honor.

[Court]: Are you satisfied with the services of your attorney?

[Carnes]: Yes.

. . . .

[Court]: Counsel, have you discussed this matter with your client?

[Demers]: I have, your Honor.

[Court]: There's no communication problems between you and your client?

[Demers]: No, your Honor.

[Court]: Do you believe that your client understands his constitutional rights?

[Demers]: I do, your Honor.

[Court]: Do you believe that your client's waiver of these rights is knowing and voluntary?

[Demers]: Yes, your Honor.

(10/14/21 Hr'g Tr. at 7-9.)

Carnes then pled guilty. (*Id.*) Two weeks later, the district court sentenced Carnes pursuant to the plea agreement. (Doc. 64.) Carnes now appeals the denial of his February 12, 2021 Motion to Dismiss.

SUMMARY OF THE ARGUMENT

Carnes waived the right to appeal the denial of his February 12, 2021 Motion to Dismiss when he pled guilty without reserving any issues for appeal. At Carnes' initial appearance in March 2019, the district court erroneously advised Carnes that he could appeal pretrial rulings following a guilty plea. However, when Carnes pled guilty two and a half years later, the court corrected the earlier statement and explicitly advised Carnes that he was waiving his right to appeal pretrial rulings via his guilty plea. Carnes and his attorney, Demers, indicated that Carnes understood his rights and was voluntarily and knowingly waiving them.

Carnes did not obtain approval from the prosecutor or the court to reserve his right to appeal. Carnes explicitly agreed that the plea agreement contained the entirety of the agreement between him and the State, which did not include a clause reserving his right to appeal.

Even if Carnes had preserved the issue for appeal, the district court did not err when it denied his February 12, 2021 Motion to Dismiss. Carnes did not substantially comply with the IAD because he failed to provide documentation showing the time he had already served on his sentence, the amount of any good time earned, and any decisions from the parole board. Furthermore, Carnes provided inconsistent, incomplete, or contradictory information on his sentence term, the date his sentence began, and his earliest parole date.

Carnes chose to bypass prison officials and file the IAD request on his own. Accordingly, he did not obtain the required certificate that the Nevada DOC would normally have sent to Montana officials by registered or certified mail. When Carnes decided to make the IAD request on his own, without even the help of his attorney, he assumed the burden of complying with the IAD requirements. The district court did not err when it found Carnes failed to substantially comply with the IAD and subsequently denied his February 12, 2021 Motion to Dismiss.

ARGUMENT

I. Standard of review

A district court's denial of a motion to dismiss presents a question of law, which this Court reviews de novo. *State v. Nickerson*, 2014 MT 83, ¶ 6, 374 Mont. 354, 322 P.3d 421. Factual findings made by the district court supporting the denial of the motion "are reviewed under the clearly erroneous standard." *Id.*

II. Carnes waived the right to appeal the denial of his February 12, 2021 Motion to Dismiss when he pled guilty.

"Montana's long standing jurisprudence holds that 'where a defendant voluntarily and knowingly pleads guilty to an offense, the plea constitutes a waiver of all non-jurisdictional defects and defenses, including claims of constitutional rights violations which occurred prior to the plea.'" *State v. Watts*, 2016 MT 331,

¶ 9, 386 Mont. 8, 385 P.3d 960 (quoting *State v. Lindsey*, 2011 MT 46, ¶ 19, 359 Mont. 362, 249 P.3d 491) (citations omitted).

To preserve the denial of a pretrial motion for appeal following a guilty plea, the defendant must have “the approval of the court and the consent of the prosecutor” Mont. Code Ann. § 46-12-204(3). “It follows that the right to appeal from an adverse pre-plea ruling is waived unless it is specifically reserved.” *State v. Spreadbury*, 2011 MT 176, ¶ 11, 361 Mont. 253, 257 P.3d 392.

The defendant’s “guilty plea ‘represents a break in the chain of events’ in the criminal process.” *Spreadbury*, ¶ 11. Accordingly, all allegations of statutory or constitutional violations that occurred prior to the plea must be specifically reserved for appeal. *Id.* After pleading guilty without reserving an appeal, the “defendant may only attack the voluntary and intelligent character of the guilty plea and may not raise independent claims relating to prior deprivations of constitutional rights.” *State v. Stone*, 2017 MT 189, ¶ 13, 388 Mont. 239, 400 P.3d 692.

A district court may cure an incorrect statement of the law by later correcting the statement. *See State v. Bosch*, 125 Mont. 566, 574, 242 P.2d 477, 481 (1952) (stating the “[g]eneral rule is that an instruction which states the law inaccurately or incompletely or even incorrectly in part may be cured by others which correct the error or render it innocuous.”) In fact, the purpose of lodging

objections is to provide the district court with the opportunity to correct errors at the first opportunity. *State v. Ford*, 2001 MT 230, ¶ 27, 306 Mont. 517, 39 P.3d 108. Generally, a “proper colloquy can be said to have cured any misunderstanding [the defendant] may have had about the consequences of his plea.” *Ramos v. Rogers*, 170 F.3d 560, 565 (6th Cir. 1999).

Here, the district court initially misadvised Carnes that he could appeal any adverse pretrial rulings after a change of plea. This advisement occurred at Carnes’ initial appearance in March 2019. At the change of plea hearing, which occurred over two and a half years later, in September 2021, the court corrected the error by specifically advising Carnes that he was waiving the right to appeal by pleading guilty. Although Carnes initially responded to the advisement by asking “[w]hat’s appeal?”, he later indicated that he had spoken with his attorney about the rights he was waiving. Demers indicated that Carnes understood his rights and that he was entering his plea knowingly and voluntarily.

Carnes’ argument that he preserved his right to appeal via the court’s erroneous statement from two and a half years prior to his change of plea is without merit. First, there is no indication Carnes relied on the statement. Even if he had, the court’s subsequent correct statement of the law cured the mistake. Additionally, Demers, who was Carnes’ new attorney, was not present at the initial appearance and would not have known about, nor encouraged Carnes to rely on,

the prior statement. Rather, Carnes and Demers both indicated to the court that Carnes understood the rights he was waiving and was doing so knowingly and voluntarily.

Furthermore, waiving the right to appeal is not one of the rights a defendant must specifically waive pursuant to Mont. Code Ann. § 46-12-210. Rather, preserving an appeal following a guilty plea is governed by Mont. Code Ann. § 46-12-204, which requires a defendant to have “the approval of the court and the consent of the prosecutor” Accordingly, to preserve an issue for appeal, Carnes needed to affirmatively negotiate that right with the prosecutor and then seek approval to do so from the court. Carnes did not follow that procedure.

Moreover, the plea agreement contained an “entire agreement” clause, which stated that the plea agreement constituted the entirety of the agreement between the State and Carnes. “Any term or condition” that was not “expressly stated” in the plea agreement was “not to be considered part of the agreement.” (Doc. 60 at 9.) Pursuant to this clause, Carnes explicitly waived the right to appeal by not negotiating for its inclusion into the plea agreement.

Carnes obtained a substantial benefit through his agreement with the State. The State agreed to amend his felony DUI to Criminal Endangerment. As such, Carnes likely avoided additional time in custody at the WATCH rehabilitation program. Carnes also avoided a mandatory minimum \$5,000 fine and the other

collateral consequences of a felony DUI. There is nothing in the record that suggests the State was willing to allow Carnes the right to appeal the denial of his pretrial motion on top of the significant benefit he received through the plea agreement. Therefore, Carnes did not preserve his appeal.

III. The district court correctly denied Carnes’ February 12, 2021 Motion to Dismiss.

A. General provisions of the IAD.

The IAD establishes “the procedures by which a state may obtain trial for a prisoner incarcerated in another jurisdiction.” *State v. Dodson*, 2009 MT 419, ¶ 8, 354 Mont. 28, 221 P.3d 687. “The purpose of the IAD is to encourage the expeditious and orderly disposition of outstanding charges against a prisoner held outside the charging jurisdiction, and facilitate a determination of the proper status of any detainers based on untried indictments, informations, or complaints.” *Id.* The IAD defines the state where the defendant is incarcerated as the “sending state” and the state with the untried pending charges as the “receiving state.” Mont. Code Ann. § 46-31-101, art. II, 2-3.

The IAD is triggered by the receiving state placing a detainer on a defendant for untried charges while he is in custody in the sending state. *Dodson*, ¶ 8. A “‘detainer’ . . . is a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency, or

that the agency be advised when the prisoner's release is imminent." *Fex v. Michigan*, 507 U.S. 43, 44 (1993). Once a detainer is placed on a defendant, it is the defendant's burden "to request speedy and final disposition of the charges against him" pursuant to article III of the IAD.³ *State v. Grant*, 227 Mont. 181, 186, 738 P.2d 106, 109 (1987).

Article III requires the defendant to deliver to the "prosecuting officer and the appropriate court . . . written notice of the place of imprisonment and the prisoner's request for a final disposition" of the charges. Mont. Code Ann. § 46-31-101, art. III, 1. The request for a final disposition "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." *Id.*

If a defendant substantially complies with the provisions of article III, then the receiving state must bring him to trial within 180 days. Mont. Code Ann. § 46-31-101, art. III, 1; *State v. Seadin*, 181 Mont. 294, 297, 593 P.2d 451, 453 (1979). Absent good cause, a failure to try the defendant within 180 days

³ Article IV of the IAD outlines the process for the State to initiate the extradition of the defendant back to Montana for trial.

requires dismissal of the case with prejudice. Mont. Code Ann. § 46-31-101, art. III, 1, 4.

The defendant is first required to send the written notice and request for final disposition “to the warden, commissioner of corrections, or other official having custody of the prisoner” Mont. Code Ann. § 46-31-101, art. III, 2. The prison official “shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.” *Id.* A district court appropriately denies a motion to dismiss based on a claimed violation of the IAD when the defendant fails to substantially comply with the requirements of article III. *See State v. Wolfe*, 250 Mont. 400, 407-08, 821 P.2d 339, 343-44 (1991).

Here, the State concedes that the Montana bench warrant was served on Carnes in Douglas County, Nevada, on July 3, 2019, which served as a detainer and triggered applicability of the IAD. Carnes argues that his August 10, 2020 Motion to Dismiss served as a request for a final disposition pursuant to article III. Carnes’ motion was not clear about what he was seeking or the authority that would support his remedy. For example, he initially sought dismissal because he claimed Montana failed to follow a Nevada statute requiring dismissal of misdemeanor charges if not tried within 60 days. (*See Doc. 19 at 2.*)

However, in his conclusion in his August 10, 2020 Motion to Dismiss, Carnes requested transportation to Butte for the disposition of his charges or that the charges be dismissed. (Doc. 19 at 6.) Both the State and the district court construed Carnes’ motion, at least in part, to be an improper request for final disposition pursuant to the IAD. Accordingly, the question becomes whether Carnes substantially complied with the IAD’s provisions sufficiently to require Montana to extradite Carnes for trial within 180 days of August 10, 2020.

B. Carnes failed to substantially comply with the IAD and did not remedy his noncompliance after the district court instructed him to do so.

Although Montana case law has not specifically defined “substantial compliance” as it relates to the IAD, it has analyzed the issue on several occasions. *See Seadin*, 181 Mont. at 297, 593 P.2d at 453; *compare Wolfe*, 250 Mont. at 407-08, 821 P.2d at 343-44; *see also Dodson*, ¶¶ 38-42.

In *Seadin*, the defendant (Seadin) had escaped from the Montana State Prison. *Seadin*, 181 Mont. at 295, 593 P.2d at 452. While on the lam, Seadin was arrested on new charges in Colorado. *Id.* Montana served Seadin with a detainer charging him with the prison escape while he was awaiting disposition of his Colorado case in the Denver County Jail. *Id.* After he was convicted in Colorado, Seadin was transferred to the Colorado State Prison, but the prison officials were not notified of his Montana detainer and refused to help him in filing an IAD

request to Montana. *Id.* With the help of a fellow inmate, Seadin drafted a “motion for quick and speedy trial” and sent copies to the Powell County District Court and the Powell County Attorney, which were received in Montana on March 2, 1978.

Id.

A short time later, on March 25, 1978, Seadin was transferred from Colorado to Montana. *Seadin*, 181 Mont. at 295, 593 P.2d at 451. The court set trial for its next term, to begin on May 15, 1978. *Seadin*, 181 Mont. at 296, 593 P.2d at 451. However, for unknown reasons, the trial was subsequently rescheduled multiple times until it was finally held on October 2, 1978. *Id.* Seadin argued the escape charge should be dismissed because he was not tried “within the next ‘term of court’” as required by the IAD statute in effect at the time. *Id.* The State responded by arguing that Seadin’s request did not substantially comply with article III of the IAD because it did not include the required certificate from the Colorado prison. *Id.*

Relying on *Rockmore v. State*, 519 P.2d 877 (Ariz. Ct. App. 1974), this Court found that the district court erred in denying Seadin’s motion to dismiss, even though he failed to comply with the article III certificate requirement. *Seadin*, 181 Mont. at 297-98, 593 P.2d at 453. The Court noted that the IAD should “be liberally construed so as to effectuate its purposes.” *Id.* (quoting Mont. Code Ann. § 46-31-101, art. IX.) The Court declined to fault Seadin because it was the

Colorado officials who caused his noncompliance with the IAD and Seadin had “[done] all [] he could do to comply with [its] provisions” *Seadin*, 181 Mont. at 298, 593 P.2d at 453.

Since *Seadin*, the Arizona Court of Appeals has called into question the *Rockmore* holding that provided generous latitude to defendants attempting to invoke the IAD. *See State v. Galvez*, 150 P.3d 241, 244-45 (Ariz. Ct. App. 2006). In *Galvez*, the Arizona Court of Appeals analyzed the term “substantial compliance” and held the relevant inquiry to be “whether the failure to comply strictly with the statute” would prejudice the party the statute was meant to protect. *Galvez*, 150 P.3d at 244; *accord Martien v. Porter*, 68 Mont. 450, 472, 219 P. 817, 822 (1923). The Arizona Court of Appeals held that “[a]lthough the required information need not be provided in any particular form, the phrase connotes that the required information has been provided in some form.” *Id.*

The Arizona Court of Appeals observed that the IAD places the burden on the inmate to provide the receiving state with information, which “protects the receiving state from having to investigate the prisoner’s out-of-state confinement.” *Galvez*, 150 P.3d at 244. Accordingly, if the prisoner fails to “provide the request for final disposition to the official having custody of the prisoner[,] . . . there is no substantial compliance.” *Id.*

The court in *Galvez* reasoned that a lengthy prison sentence in the sending state might dissuade the receiving state from pursuing its prosecution. *Galvez*, 150 P.3d at 244-45. For that reason, the defendant must comply with article III, which requires the defendant to inform the sending state of the term of the out-of-state commitment, time served, time remaining to be served, good time credit earned, date of parole eligibility, and any parole agency decisions. *Galvez*, 150 P.3d at 245.

In *Galvez*, the Arizona Court of Appeals held that the defendant's failure to first provide her request to the sending state's prison officials defeated her claim that she had substantially complied with the IAD. *Galvez*, 150 P.3d at 245. The court stated:

Further, the relaxed application of substantial compliance as advocated in *Rockmore* is inconsistent with traditional substantial-compliance criteria. Indeed, to the extent *Rockmore* supports *Galvez*'s substantial-compliance argument, its continuing vitality is questionable in light of *Fex v. Michigan*, 507 U.S. 43, 113 S. Ct. 1085, 122 L. Ed. 2d 406 (1993). In *Fex*, based on the "shall have caused to be delivered" language of the IAD, the United States Supreme Court rejected the policy argument that fairness "requires the burden of compliance with the requirements of the IAD to be placed entirely on the law enforcement officials involved." [*Fex*, 507 U.S.] at 52.

Galvez, 150 P.3d at 245.

The court in *Galvez* concluded that applying a substantial-compliance finding to *Galvez*'s case would require the court to "ignor[e] specific textual

requirements [that] would fail to give meaning to every part of the [IAD].” *Galvez*, 150 P.3d at 245.

Like in *Galvez*, this Court found in *Wolfe* that the defendant (Wolfe) failed to substantially comply with the IAD. *Wolfe*, 250 Mont. at 406-08, 821 P.2d at 342-44. Wolfe used explosives he obtained from his work to blow up a police car in Missoula. *Wolfe*, 250 Mont. at 403-04, 821 P.2d at 341-42. Wolfe was imprisoned in a federal prison in Oakdale, Louisiana, on separate charges by the time Missoula law enforcement determined he was the perpetrator. *Wolfe*, 250 Mont. at 405, 821 P.2d at 342. After Montana placed a detainer on Wolfe, he informed his prison case manager that he wanted to “get the paper work started on the [IAD].” *Id.* According to Wolfe, the prison officials failed to forward his IAD request to Montana within a reasonable time. *Id.*

After the prison officials failed to act, Wolfe researched the IAD in the prison law library and chose to proceed with the notification requirements of the IAD on his own without the assistance of prison officials. *Wolfe*, 250 Mont. at 406, 821 P.2d at 342. Wolfe then sent an IAD request to the Clerk of Court in Missoula County. *Id.* However, the Clerk of Court forwarded Wolfe’s IAD request to the County Attorney without filing it. *Id.* Wolfe later filed similar paperwork with the United States District Court in Missoula, which was also forwarded to the County Attorney’s Office. *Wolfe*, 250 Mont. at 407, 821 P.2d at 343. After the State failed

to extradite him to Montana, Wolfe filed a motion to dismiss alleging a violation of the IAD. *Id.* The district court denied Wolfe’s motion, holding he had not substantially complied with the IAD. *Id.*

On appeal, Wolfe argued that his request to the federal prison officials in Louisiana triggered the 180-day timeline in the IAD. *Wolfe*, 250 Mont. at 408, 821 P.2d at 343. This Court rejected Wolfe’s argument, first finding that, “besides Wolfe’s own assertion, no evidence exist[ed] in the record that the prison officials failed to respond to Wolfe’s request within a reasonable amount of time.” *Id.* This Court further held that “once Wolfe bypassed the prison officials and proceeded on his own to comply with the IAD notice procedure, he assumed the burden for any deficiencies of notice.” *Id.* This Court concluded:

[W]e agree with the District Court that Wolfe’s right to a speedy trial under the 180-day speedy trial provision of the IAD was not violated because Wolfe chose to bypass prison officials and then, on his own, failed to substantially comply with statutory procedure under the IAD, therefore failing to trigger the IAD’s 180-day speedy trial provision.

. . . .

Under the express terms of the IAD, Wolfe was required to send written notice and a request for final disposition of his information to both the Missoula County Attorney’s Office and the District Court. This he failed to do on two different occasions. We therefore hold that Wolfe was not denied his right to a speedy trial because he failed to comply with IAD procedure which would trigger the 180-day speedy trial provision.

Wolfe, 250 Mont. at 407-08, 821 P.2d at 343-44.

Furthermore, in *Dodson*, this Court held that a defendant cannot ignore a request to remedy deficiencies in an article III request and then claim the State violated its provisions. *Dodson*, ¶¶ 10, 39. Dodson was on federal probation when he committed new crimes in Missoula County. *Dodson*, ¶ 8. After his arrest in Missoula County, Dodson was sent to a federal prison in Texas for violating his federal probation. *Id.* Missoula County served a warrant on Dodson while he was in prison in Texas. *Id.* Dodson then filed an IAD request with the officials at the prison in Texas, but the federal prison officials failed to forward it to Montana. *Dodson*, ¶¶ 8, 10.

A couple of months later, Dodson learned that prison officials had failed to forward the request. *Dodson*, ¶ 10. The officials offered Dodson another opportunity to file his request, but Dodson declined to do so and, instead, filed a pro se motion to dismiss the charges against him in Missoula. *Id.* This Court held that Dodson had not complied with the IAD because the Montana district court never received notice of Dodson’s IAD request and, thus, he failed to trigger the 180-day deadline. *Dodson*, ¶ 41.

In the district court, Carnes admitted that his August 10, 2020 Motion to Dismiss was an “improper” motion. (Doc. 33 at 2.) Carnes attached a “Verification of Incarceration” form to his motion. (Doc. 19, Add. 1C.) The form listed Carnes’ earliest release date as July 1, 2021, and listed August 7, 2022, as the “expiration

date” for his sentence. The verification stated Carnes had been sentenced to “24-72 mo.” (*Id.*) The verification did not include Carnes’ sentencing date or the time he had already served, the amount of good time credit earned, or any decisions previously made by the parole board, if any.

Carnes next attached to his August 10, 2020 Motion to Dismiss a “Motion to Quash Warrants &/or Fines; or in the Alternative Sentence in Absentia to Concurrent Term.” (*See* Doc. 19, Add. 1E.) In that attached motion, Carnes indicated his “booking date” was October 2, 2019. (*Id.*) Carnes also stated that he was “serving or facing a term of: State time 6 years/72 months.” This statement was only partially consistent with his “Verification of Incarceration” form, which listed his sentence as ranging from 24 to 72 months.

Carnes also attached a letter to the “District Attorney, Butte Montana” that was on a form that appears to be designed to provide notice of an IAD request to officials in the State of California. (Doc. 19, Add. 3E.) On that form, Carnes indicated he had been sentenced for the offense of Duty to Stop at Scene of Accident and that he was sentenced in Nevada on October 2, 2019, to 24 to 72 months. Carnes indicated he had a “Tentative Release Date/Minimum Eligible Parole Date of 6/1/22.” (*Id.*) Notably, Carnes listed his minimum eligible parole date in this letter as almost one year later than what he listed it as in the Verification of Incarceration.

Carnes did not follow the appropriate procedure of sending his IAD request to a prison official, who would then send an appropriate certificate via registered mail to the Montana authorities. Not only were Carnes' forms inconsistent and sent through improper channels, they were also contradictory. Given the contradictory parole dates and lack of clarity as to when his sentence began to run—whether it was the October 2, 2019 sentencing/booking date or his July 2, 2019 arrest date—the State of Montana could not have known when Carnes would obtain parole or discharge his sentence.

Without knowing an accurate parole date, the State of Montana could not make an educated decision on whether to continue prosecution or let the Nevada case serve the purposes of sufficient punishment and rehabilitation for the Montana offense. Pursuant to *Wolfe* and *Galvez*, once Carnes chose to bypass the Nevada prison officials, he assumed the burden of providing complete and accurate information to the State of Montana. Carnes did not meet this burden and failed to substantially comply with article III of the IAD.

Moreover, there is also no indication in Carnes' August 10, 2020 Motion to Dismiss that he had attempted to make his request through the appropriate prison officials or that they had thwarted or failed to forward his request. Carnes did not even allege in his August 10, 2020 Motion to Dismiss that he had made an IAD request to the Nevada DOC at all. In fact, it was not until Demers filed his reply

brief to his February 12, 2021 Motion to Dismiss that Carnes first alleged there had been a miscommunication between unnamed officials in Montana and the Nevada DOC that led the Nevada officials to believe Carnes was being held on a parole violation and not subject to the IAD.

Demers wrote that, due to this miscommunication, “Nevada was not properly informed to start the process of getting Mr. Carnes the correct forms under the IAD.” (Doc. 35 at 2.) However, Carnes did not give the State or the district court the opportunity to remedy that issue because he first raised it in his reply brief to his February 12, 2021 Motion to Dismiss.

Although Demers alleged in the same reply brief that Carnes had “sent kites and letters trying to start the process,” Carnes did not introduce any of these kites or letters at the evidentiary hearing. Furthermore, Carnes did not testify. Accordingly, it is entirely unclear what Carnes did to alert the appropriate prison officials that he wanted to make an IAD request. It cannot be assumed that Carnes made the appropriate request or that Nevada prison officials thwarted or inappropriately responded to his attempts if he, in fact, made them.

What is clear is that the State informed Carnes in its response to his August 10, 2020 Motion to Dismiss of the necessary procedure to follow the IAD. (Doc. 20.) The district court, in its order denying Carnes’ August 10, 2020 Motion to Dismiss also informed Carnes that he needed to comply with the IAD statute if

he wanted to make an IAD request. Pursuant to *Dodson*, Carnes should have refiled his IAD request after the State and the district court instructed him on what was lacking. Carnes never remedied the deficiencies, instead choosing to wait 186 days from his deficient August 10, 2020 Motion to Dismiss to file his February 12, 2021 Motion to Dismiss alleging a violation of the IAD.

This case is similar to *Wolfe* and *Dodson* and distinguishable from *Seadin*. This case is distinguishable from *Seadin* for the reasons set forth above. First, Carnes failed to provide complete, consistent, and accurate information about the time his sentence began to run (July 2, 2019 or October 2, 2019), his parole eligibility date (July 1, 2021 or June 1, 2022), and the length of his sentence (72 months or 24 to 72 months). Second, unlike in *Seadin*, Carnes was afforded the opportunity to cure his deficient request, but he failed to do so. Carnes also failed to timely alert the district court to any issues he was having with Nevada officials not processing his request.

Furthermore, this case is distinguishable from *Seadin* because Carnes was represented by an attorney in Montana while he was incarcerated out-of-state. Carnes attached a letter he received from Joseph to his August 10, 2020 Motion to Dismiss. In the letter, Joseph advised Carnes that the initial \$750 retainer had been exhausted and that he would “require additional fees to try your case.” (Doc. 19, Add. 1B.) However, there is no indication in the letter that Joseph was unwilling to

help Carnes with the IAD process if Carnes asked for his assistance. In fact, at the close of the letter, Joseph instructed Carnes that “[i]f there [was] any other information you may request, please advise.”

Furthermore, upon Carnes’ request, the district court appointed the Office of the Public Defender to represent him in December 2020. (Docs. 26, 28.) Once Demers started working on the case, he contacted the prison officials in Nevada and was able to obtain the appropriate certificate within six days of requesting it from the Nevada DOC.⁴ (6/30/21 Hr’g Tr. at 17.) Not only did Carnes bypass prison officials to make his own IAD request, he also initially bypassed his own attorney.

There is no indication in the record, nor did Carnes testify he had made a request to Joseph for help on his IAD request or that Joseph had refused to help him. Once Demers was appointed to represent Carnes, Demers was able to quickly obtain the appropriate certificate from the Nevada DOC. Therefore, Carnes’ failure to substantially comply with the IAD requirements could have been, and ultimately was, remedied by simply working with his counsel. Carnes’ failure to initially

⁴ Carnes argues the certificate Demers obtained from the Nevada DOC contained the same information as what was attached to his August 10, 2020 Motion to Dismiss. However, that is not true. The certificate stated Carnes’ date of incarceration was July 2, 2019, as opposed to October 2, 2019. The certificate also clarified that Carnes’ earliest parole date was July 1, 2021, not June 1, 2022, as indicated in Carnes’ August 10, 2020 Motion to Dismiss, Addendum 3E. (*See* Doc. 36; *compare* Doc. 19.)

work with his counsel does not relieve him of his burden to follow the IAD requirements.

In sum, the district court did not err when it denied Carnes' February 12, 2021 Motion to Dismiss. Carnes' IAD request contained incomplete, inconsistent, and contradictory information. Carnes did not follow the appropriate procedure by asking the Nevada DOC to send the request with the appropriate certificate via certified or registered mail to Montana. After his August 10, 2020 Motion to Dismiss was denied, rather than come into compliance with the IAD requirements, Carnes waited 186 days and filed his February 12, 2021 Motion to Dismiss. Carnes was represented by counsel for the entirety of his case in Montana, but does not appear to have requested assistance from Joseph with the IAD process. Demers was able to remedy the issue with the Nevada DOC within six days of making the appropriate request. For these reasons, Carnes did not substantially comply with article III of the IAD.

CONCLUSION

Carnes waived his right to appeal the denial of his February 12, 2021 Motion to Dismiss when he pled guilty without reserving his right to appeal. Even if Carnes had preserved his appeal, the district court did not err in denying his motion

because Carnes failed to substantially comply with the IAD. Accordingly, this Court should affirm the district court's denial of Carnes' motion.

Respectfully submitted this 22nd day of June, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 8,548 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

/s/ Bjorn Boyer
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CERTIFICATE OF SERVICE

I, Bjorn E. Boyer, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 06-22-2023:

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