

the personnel of the Johnson County Jail were aware that a detainer had been lodged against Defendant. On that date, the jail personnel informed Defendant, “[REDACTED], You do have a pending warrant in KCMO, however they have indicated they will not extradite from Kansas on this warrant.” Exhibit 15 also demonstrates that on January 4, 2018, Defendant continued his attempts to obtain information regarding his warrant from this jurisdiction when he writes to jail personnel “I have sent letters over trying to find out some information on the warrant, but haven’t gotten no responses (sic)”. The jail personnel responds to this inquiry, “[REDACTED], The warrant in Jackson County is for Robbery. The offense date listed on the warrant is 09-26-2010. It looks as though it wasn’t issued until 2017 though. That is all I can find out about it.”

Immediately following these communications, on January 26, 2018, Defendant mailed to Jackson County, Missouri Circuit Court his pro se “Motion Requesting for (A) Final Disposition of Detainers Under 217.450-485²”. This pleading was file stamped in Jackson County Circuit Court on February 5, 2018. On February 1, 2018, Defendant sent Exhibit L to the administration of the Johnson County, Kansas Jail requesting that certification of his sentence be sent, along with a copy of his “motion for a final disposition”, to Jackson County, Missouri regarding Case No. 1716-CR04741. Despite Defendant’s efforts, no action was taken with regards to these requests. Exhibit 15 also contains multiple attempts by defendant to obtain information from Johnson County, Kansas Jail personnel regarding his detainer from Jackson County, Missouri with responses from Johnson County, Kansas Jail personnel consistent with “There is no other information I can give you concerning your warrant in Jackson County. Maybe an attorney could get more information for you.”

In addition to the State’s various arguments regarding the deficiencies in defendant’s pleadings or forms, the State argues that the Johnson County, Kansas Jail is not a “penal or correctional institution” as provided for in the Interstate Agreement on Detainers. The State relies upon the holdings in *Burgess v. State*, 228 S.W.3d 43 (Mo.App. 2007). In *Burgess*, the Western District found that a county jail was not a “department correctional facility” as required by the terms of R.S.Mo. §217.450, the Uniform Mandatory Disposition of Detainers Law (UMDDL). The State argues that if a county jail is not a “department correctional facility” under UMDDL, then a county jail should not be a “penal or correctional institution” under IAD. However, Missouri courts have consistently interpreted UMDDL’s language of “department correctional facility” as mandating the prisoner’s placement in a DOC facility. The IAD terminology of a “penal or correctional institution” has not been so narrowly defined.

² Defendant incorrectly cited the statute sections pertaining to the Uniform Mandatory Disposition of Detainers Law (UMDDL), which applies to persons incarcerated within the State of Missouri. It is clear Defendant should have been invoking his rights under the provisions of the Interstate Agreement on Detainers (IAD), codified at R.S.Mo. Section 217.490.

Defendant counters with multiple cases from other jurisdictions finding a county jail may be a “penal or correctional institution”, including *State v. Burnett*, 301 P.3d 698 (Kansas 2013). “The IAD is a congressionally-sanctioned interstate agreement that permits a prisoner in one state to seek disposition of criminal charges filed against him by second state. The primary purpose of the agreement is to provide for prompt disposition of detainees, and it must be liberally construed to effectuate this purpose.” *State v. Lybarger*, 165 S.W.3d 180, 184 (Mo.App. 2005). This Court finds that the actual sentence entered against defendant by the Kansas court should be the controlling factor to be considered in determining whether defendant should be characterized as “a prisoner in one state [seeking] disposition of criminal charges filed against him by second state”. In the present case, defendant was sentenced in Kansas to four years of incarceration, with the first three years being served in the custody of the Secretary of Corrections and the last year being served in the Johnson County, Kansas Jail. By entering consecutive sentences totaling four years of incarceration with the last year of incarceration served in a county jail, this Court finds that defendant was “a prisoner in one state [seeking] disposition of criminal charges filed against him by second state” and as such, the Johnson County, Kansas Jail becomes a “penal or correctional institution” for the purposes of IAD.

The State further contests Defendant’s motion by claiming that the pro se forms sent by Defendant are insufficient to invoke his rights pursuant to the Interstate Agreement on Detainers. Among the deficiencies pointed out by the State are Defendant’s failure to “cause to be delivered” to the State certification of Defendant’s remaining term of imprisonment in Johnson County, Kansas.

The State’s argument relies upon R.S.Mo §217.490, Article III, Section 1, which provides as follows:

Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party 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.
(emphasis added).

However, the State's reliance on this provision ignores the language contained in R.S.Mo §217.490, Article III, Section 2, which provides that "[t]he written notice and request for final disposition referred to in paragraph 1 of this article shall be given or sent by the prisoner to the warden, director of the division of adult institutions 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." The Interstate Agreement on Detainers clearly places upon the warden having custody of the prisoner the obligation to promptly forward the required certification regarding commitment. The statutory scheme does not place this responsibility upon the Defendant. The responsibilities placed upon the institution are discussed in *State v. Lybarger*, "[a]s adopted by Missouri and other states (including Kansas), the IAD requires prison officials to "promptly inform" the prisoner of any detainer lodged against him and of his right to request final disposition of an indictment, information, or complaint pending in the second state. *Lybarger*, 165 S.W.3d 180, 184 (Mo.App. 2005) (emphasis added).

Further, R.S.Mo §217.490, Article III, Section 2 provides that "[t]he warden, director of the division of adult institutions 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." In the current case, Lieutenant Brian Zeef of the Johnson County, Kansas Jail testified that his facility does not perform this statutory obligation. Lieutenant Zeef testified, "We don't have a process for that. It is my understanding that is for penal institutions and we are a pretrial institution so we don't do those."

The State's witness Kevin Pose testified that the institution having custody of the prisoner has an obligation to provide the prisoner the correct forms utilized for disposition of detainees. These forms would include the following: Form One a Notice of Detainer; Form Two a Notice of Place of Imprisonment, which acts as an extradition waiver; Form Three that is filled out by the institution certifying how much time he has left to serve; and Form Four which is the statutorily required offer of temporary custody. Mr. Pose's testimony that all such forms must be provided by the institution to the prisoner is consistent with Article III, Section 2, which provides "[t]he warden, director of the division of adult institutions 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." Again, these are all statutory duties that Johnson County, Kansas

Jail did not perform because as Lieutenant Zeef testified such obligations are for penal institutions and the jail is a pretrial institution.

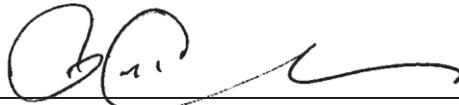
Even lacking the statutorily required assistance of the personnel of the Johnson County, Kansas Jail, Defendant accomplished filing his pro se motion in the appropriate circuit court. On February 5, 2018, Defendant's motion was filed in the court's electronic filing system. Through the electronic filing system, Prosecutor Luke Alsobrook was registered as counsel for the State in the present case. Mr. Alsobrook would have been notified of Defendant's motion through the court's electronic filing system. "Notice to both the prosecutor and the appropriate court is considered an essential element [of IAD]." *Rivera v. State*, 106 S.W.3d 635, 639 (Mo.App. 2003). Defendant requested that Johnson County, Kansas Jail provide certification of his sentence, even though the statute obligates the jail to provide this information without his request. Defendant certainly made a good faith attempt to exercise his rights pursuant to Section . . . "[A] good faith effort to invoke the provisions of § 217.490 RSMo 1994, is sufficient". *Rivera*, at 639.

For these reasons, Defendant's Motion to Dismiss filed herein on May 3, 2019, is GRANTED. This matter shall be dismissed with prejudice.

IT IS SO ORDERED.

October 30, 2019

Date



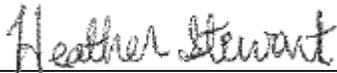
HONORABLE PATRICK WILLIAM CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that copies of the above and foregoing were mailed/mailed/faxed on this 15th day of October, 2019 to:

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JAA, Division 10