

Westlaw.

124 F.3d 216 (Table)

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124 F.3d 216 (Table), 1997 WL 543370 (10th Cir.(Colo.)), 97 CJ C.A.R. 1789  
 Unpublished Disposition

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### Briefs and Other Related Documents

NOTICE: THIS IS AN UNPUBLISHED  
 OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA10 Rule 36.3 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Tenth Circuit.  
 Sherman Woodrow DOBSON, Petitioner-Appellant,  
 v.  
 G.L. HERSHBERGER, Warden and Attorney  
 General of the District of Columbia,  
 Respondents-Appellees.  
 No. 97-1021.

Sept. 3, 1997.

Before SEYMOUR, Chief Judge, PORFILIO and  
 MURPHY, Circuit Judges.

#### ORDER AND JUDGMENT [FN\*]

FN\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, or collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

SEYMOUR, Chief Judge.

\*\*1 After examining the briefs and appellate record, this panel has determined unanimously that

oral argument would not materially assist the determination of this appeal. *See* Fed. R.App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Mr. Dobson, a pro se prisoner, appeals from the district court order dismissing his petition for writ of habeas corpus under 28 U.S.C. § 2254. We affirm.

While Mr. Dobson was awaiting trial in Maryland for unrelated criminal charges, the District of Columbia filed several detainers with Maryland officials seeking his transfer to stand trial there. After Mr. Dobson's conviction in Maryland, a final detainer was issued to Maryland officials at the Maryland State Penitentiary. Mr. Dobson's transfer was effected under the Interstate Agreement on Detainers Act (IAD), 18 U.S.C. app. § 2.

Article IV(a) of the IAD calls for a thirty-day period between when the detainer is lodged and when the transfer is made. The Uniform Criminal Extradition Act (UCEA), Md. Ann.Code art. 41, § 2-210, further requires a hearing before the transfer can be made. *See Cuyler v. Adams*, 449 U.S. 433, 448 (1981) (the IAD incorporates the pre-transfer hearing requirement of the UCEA in those states that have adopted it). Mr. Dobson received no pre-transfer hearing and he was transferred to the District of Columbia eighteen days after the final detainer was issued. *See Dobson v. United States*, 449 A.2d 1082, 1084 (D.C.1982) (reviewing history of the case).

In the District of Columbia, Mr. Dobson was tried on several counts for which he moved to sever offenses, which ultimately resulted in three separate trials. The first of these trials was held within the 120-day period required by Article IV(c) of the IAD. However the remaining two were not held until significantly after this period. *See id.* After

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his conviction and appeal, the District of Columbia Court of Appeals affirmed the Superior Court's ruling that the IAD was not violated. *See id.* at 1086-87.

Mr. Dobson is currently serving his District of Columbia sentence in a federal facility in Colorado under the custody of the Bureau of Prisons. Mr. Dobson petitioned the District Court in Colorado for a writ of habeas corpus challenging the District of Columbia conviction and the applicability of The Prison Litigation Reform Act (PLRA) of 1995, 28 U.S.C. § 1915(b)(1), to habeas corpus actions. The petition was referred to a federal magistrate judge who recommended the matter be transferred to the district court of the District of Columbia.

Acknowledging the question of jurisdiction, the district court dismissed the action for lack of merit, finding the IAD violations uncognizable for habeas corpus relief absent a showing of prejudice resulting from the violations. The district court found the PLRA applicable to habeas corpus actions and allowed Mr. Dobson's application to proceed without prepayment of fees but obligated him to pay the required filing fees in monthly installments. During the course of this appeal, we held that the PLRA does not apply to habeas corpus proceedings. *See United States v. Simmonds*, 111 F.3d 737, 743 (10th Cir.1997). The issue before us then is whether these IAD violations are worthy of habeas corpus relief.

\*\*2 In *Reed v. Farley*, 512 U.S. 339 (1994), the Supreme Court held that a failure to observe the speedy trial requirement of Article IV(c) of the IAD is uncognizable in a habeas corpus proceeding when the defendant "suffered no prejudice attributable to the delayed commencement." *Id.* at 352. This circuit follows this approach in habeas corpus actions by requiring a showing of "special circumstances" that drive the IAD violations to a level of depriving the defendant of some constitutionally protected right. *See Knox v. Wyoming Dep't of Corrections State Penitentiary Warden*, 34 F.3d 964, 967 (10th Cir.1994) ("only 'special circumstances' permit collateral attack for

violations of the IAD"), *cert. denied*, 513 U.S. 1091 (1995).

Even assuming the IAD was violated, a question that need not be answered, there is no showing in the record of any prejudice during Mr. Dobson's trial or sentencing due to the IAD violations. Mr. Dobson incorrectly asserts that the required showing of prejudice as a result of IAD violations under collateral review is only necessary if the issue was not raised at trial. For any application for collateral review, a certificate of appealability will only be issued if "applicant has made a substantial showing of the denial of a constitutional right." *See Lennox v. Evans*, 87 F.3d 431, 433 (10th Cir.1996), *cert. denied*, 117 S.Ct. 746 (1997). Without a showing of actual prejudice resulting from these violations, the violations by themselves do not rise to a constitutional deprivation. *See Knox*, 34 F.3d at 968.

The certificate of appealability is DENIED and the appeal is DISMISSED.

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#### Briefs and Other Related Documents (Back to top)

- 97-1021 (Docket) (Jan. 16, 1997)

END OF DOCUMENT

HABEAS

**U.S. District Court  
District of Kansas (Topeka)  
CIVIL DOCKET FOR CASE #: 5:05-cv-03254-RDR  
Internal Use Only**

Salaam v. Gallegos  
Assigned to: Senior Judge Richard D. Rogers  
Cause: 28:2241 Petition for Writ of Habeas Corpus (federa

Date Filed: 06/08/2005  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus  
(General)  
Jurisdiction: U.S. Government  
Defendant

**Petitioner**

**Amin Abdus Salaam**  
*also known as*  
James Waddell

represented by **Amin Abdus Salaam**  
11280-007  
USP-Leavenworth  
PO Box 1000  
Leavenworth, KS 66048  
PRO SE

V.

**Respondent**

**E Gallegos**  
*Warden, USP-Leavenworth*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
06/08/2005	● <u>1</u>	PETITION for Writ of Habeas Corpus filed by Amin Abdus Salaam (Attachments: #(1) Appendix A; #(2) Appendix B; #(3) Appendix C; #(4) Appendix D; #(5) Appendix E) (smnd) (Entered: 06/09/2005)
06/08/2005	● <u>2</u>	MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT of 1 Petition for Writ of Habeas Corpus by Petitioner Amin Abdus Salaam (Attachments: #(1) Appendix A)(smnd) (Entered: 06/09/2005)
06/08/2005	● <u>3</u>	MOTION for Leave to Proceed in forma pauperis by Petitioner Amin Abdus Salaam(Attachments: #(1) Inmate Account Statement) (smnd) (Entered: 06/09/2005)
06/08/2005	● <u>4</u>	MOTION to Modify the Record by Petitioner Amin Abdus Salaam (Attachments: #(1) Exhibits) (smnd) (Entered: 06/09/2005)
07/05/2005	● <u>5</u>	ORDER ENTERED: Petitioner's motion <u>3</u> for leave to proceed in forma pauperis is denied. Petitioner is granted thirty (30) days to submit the full filing fee to the clerk of the court. Any objection to this order must be

		filed on or before the date payment is due. The failure to pay the fees as required herein may result in the dismissal of this action without prejudice and without prior notice to the plaintiff. Signed by Senior Judge Richard D. Rogers on 07/05/05. (smnd) (Entered: 07/05/2005)
07/18/2005	●	FILING FEE PAID: in the amount of \$ 5.00, receipt number 049102 (sal) (Entered: 07/21/2005)