

**IN THE SUPREME COURT**  
**STATE OF WYOMING**

THOMAS MERCHANT,	)
Petitioner,	)
	)
vs.	)
	)
JASON STROHBEHN, Executive Director,	)
Adult Community Corrections of Laramie	)
County, and R.O. LAMPERT, Director,	)
Wyoming Dept. of Corrections,	)
Respondents.	)

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**PETITION FOR WRIT OF HABEAS CORPUS**

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COMES NOW the petitioner, Thomas Merchant, by and through counsel, Diane Courselle, Director, University of Wyoming Defender Aid Program, and Charles Quinton, Student Intern, University of Wyoming Defender Aid Program, being duly sworn on his oath, and for his petition for a writ of habeas corpus states as follows:

1. Petitioner is imprisoned and restrained of his liberty at Adult Community Corrections of Laramie County, Cheyenne, Wyoming.
2. The persons by whom petitioner is so imprisoned and restrained are R.O. Lampert, Director, Wyoming Department of Corrections, and Jason Strohbehn, Executive Director, Adult Community Corrections of Laramie County, Frontier Corrections, Inc.
3. The cause or pretense of the imprisonment and restraint is petitioner’s conviction of two (2) counts false written statements to obtain credit, four (4) counts felony check fraud, two (2) counts felony obtaining by false pretenses in violation of Wyoming Statutes §§ 6-3-612, 6-3-702(a)(b)(iii), 6-3-407(a)(i), and 6-3-402(b)(c)(i). The judgment and sentence was entered

October 3, 1997 in the District court for the First Judicial District of Wyoming. A copy of the judgment and sentence is attached as Exhibit A.<sup>1</sup>

4. In May, 1996, Mr. Merchant was serving a sentence for a Colorado conviction and was housed in the Colorado Territorial Correctional Facility in Cañon City, Colorado when a detainer was filed against him based on charges pending in the state of Wyoming. (See Exhibit C).

5. Mr. Merchant requested disposition of the Wyoming charges. (See Exhibit D). In October 1996, Colorado authorities delivered Mr. Merchant to Weld County, Colorado; from there, he was transported to Wyoming to stand trial on the charges pending against him in Wyoming. (See Exhibit E (Petition to Reconsider Order Denying Defendant’s Motion to Dismiss, or in the Alternative to Clarify the Record (hereafter “Petition to Reconsider”), ¶3); see also Exhibit F (Appellant’s Brief, pp. 20-23)).

6. Prior to being tried in Wyoming, Mr Merchant was returned to Colorado on two occasions. He was returned to Weld County, Colorado both times. On November 27, 1996, he was returned to Weld County, Colorado. He was held in custody there until December 3, 1996, when he was sent back to Wyoming. He remained in Wyoming until February 20, 1997, when he was again returned to Weld County, Colorado. Mr. Merchant remained in Weld County, Colorado until February 24, 1997, when he was finally returned to Wyoming. He then remained in Wyoming until the conclusion of his trial on the Wyoming charges. (See Exhibit E (Petition to Reconsider, ¶4); Exhibit F, pp. 20-23).

7. Mr. Merchant’s current imprisonment is illegal. The Interstate Agreement on Detainers Act (IADA), enacted into law in Wyoming Statutes §§ 7-15-101 through 7-15-105, was violated

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<sup>1</sup> Mr. Merchant was granted a sentence reduction in July, 2002. A copy of the order reducing sentence is attached as Exhibit B.

when Mr. Merchant was brought to Wyoming for final disposition of charges pursuant to Article III of the IADA, and returned to the original place of imprisonment before trial was conducted on the Wyoming charges. Article III provides: “If a trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment,” then the remedy is that “such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.” W.S. § 7-15-101, Art. III(d). Mr. Merchant moved in the Wyoming district court for dismissal of the charge based on the violation of the IADA. Instead of complying with the statute and dismissing the charges against Mr. Merchant when the violation occurred, Mr. Merchant was tried and convicted in the First Judicial District Court of Wyoming. Due to the violation of the IADA and the remedy required by statute, that court no longer had jurisdiction to try Mr. Merchant. Thus, the imprisonment of Mr. Merchant, which resulted from that trial and conviction, is illegal.

8. The legality of Mr. Merchant’s judgment and sentence has been adjudged in two prior proceedings. This Court heard the direct appeal of Mr. Merchant’s conviction. Copies of the relevant portions of the Brief of Appellant, Brief of Appellee, Reply Brief of Appellant, and the decision of the Wyoming Supreme Court are attached as Exhibits F, G, H, and I, respectively. The Ninth Judicial District Court of Wyoming denied a petition for habeas corpus. A copy of that decision is attached as Exhibit H. No other petition for the writ has been made to and refused by any other court or judge.

9. On direct appeal of his Wyoming convictions, Mr. Merchant raised his claim that the State violated the IADA by returning him to the “sending state” before he was brought to trial in the “receiving state” as defined in Article II(a)(ii) and (iii). Mr. Merchant argued that the IADA

specifically provides for dismissal with prejudice of the charges against him under the circumstances.

10. On April 4, 2000, this Court affirmed Mr. Merchant's conviction. (See Exhibit I; *Merchant v. State*, 4 P.3d 184 (Wyo. 2000)).

11. There is no dispute that Article III of the IADA governs if, as here, the request for final disposition is made by a prisoner; Article IV governs only if an "officer of the jurisdiction in which an untried indictment, information, or complaint is pending" requests custody of the prisoner for the purpose of resolving the charges. W.S. § 7-15-101, Art. IV(a). This Court found that the meaning of "original place of imprisonment" in Article III differs from its meaning in Article IV. This distinction was based on the fact that Article III says "original place of imprisonment," and Article IV says "original place of imprisonment pursuant to Article V(e)." Article V(e), in turn, refers to returning the prisoner to the "sending state." This slight difference in phrasing led this Court to conclude that there was no violation of Article III the IADA when Mr. Merchant was transferred to the sending state, but to a facility other than the Colorado Territorial Correctional Facility in Cañon City, Colorado. See *Merchant*, 4 P.3d at 189 (Exhibit I). This Court held that a violation of Article III would have occurred only if Mr. Merchant had been returned to Cañon City, Colorado, because that was his "original place of imprisonment." This Court failed to take into account that prior to his initial transport to Wyoming, the Colorado Department of Corrections had transferred temporary custody of Mr. Merchant to Weld County. (See Exhibit E (Petition to Reconsider)). Thus, the "original place of imprisonment" from which Mr. Merchant was first transported to Wyoming was the same place to which he was twice returned by Wyoming authorities – Weld County, Colorado.

12. This Court also claimed that Mr. Merchant “was aided, not injured” by this deviation, because the shuttling between Colorado and Wyoming ensured a more prompt resolution of all outstanding charges.<sup>2</sup> With this reasoning, this Court upheld Mr. Merchant’s conviction. *Id.* (Exhibit I).

13. Shortly after this Court’s decision, the United States Supreme Court decided *Alabama v. Bozeman*, 533 U.S. 146 (2001). The issue presented was whether “the literal language of Article IV(e) bars any further criminal proceedings – because the defendant was ‘returned to his original place of imprisonment’ before ‘trial’ was ‘had.’” *Id.* at 149. Although *Bozeman* involved Article IV, rather than Article III (which applied in Mr. Merchant’s case), the Court declared the fundamental principle that the language of the IADA is absolute and states are not free to make *de minimus* exceptions. *Id.* at 153. “The language of the Agreement militates against an implicit exception, for it is absolute.” *Id.*

14. After the *Bozeman* decision, Mr. Merchant filed a petition for writ of habeas corpus in the Ninth Judicial District of Wyoming. That petition included arguments based on *Bozeman* and on other arguments not presented in Mr. Merchant’s direct appeal. The petition was denied. (See Exhibit J).

15. Given the decision of the United States Supreme Court in *Bozeman* that prohibits states from excusing violations of the IADA considered “technical,” harmless, or “*de minimus*,” and given the pre-*Bozeman* decision of this Court, in which a *de minimus* exception was applied in Mr. Merchant’s case, Mr. Merchant requests a writ of habeas corpus in order to correct his illegal restraint. He also requests a writ on the grounds that before the charges in Wyoming were resolved, he was returned to the sending state of Colorado, and more particularly to Weld County (the location from whence he first was transported to Wyoming), in violation of the single

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<sup>2</sup> While in Weld County, Mr. Merchant appeared for proceedings on outstanding Colorado charges.

transfer rule of the IADA. The legal basis for Mr. Merchant's argument is explained in greater detail in the attached memorandum of law.

WHEREFORE, Mr. Merchant requests that this Court issue a writ of habeas corpus ordering respondents to produce Petitioner in person before this Court, that Respondents be ordered by this Court to release petitioner, or, in the alternative, that this Court order Petitioner's conviction to be withdrawn, for costs and all other relief that may be just and proper in the circumstances.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

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Charles E. Quinton  
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**VERIFICATION**

I declare under penalty of perjury that, to the best of my knowledge, the facts contained in the foregoing Petition for Writ of Habeas Corpus and accompanying memorandum are true and correct.

\_\_\_\_\_  
Thomas Merchant

The foregoing was acknowledged before me by Thomas Merchant on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## TABLE OF EXHIBITS

EXHIBIT A	JUDGMENT AND SENTENCE
EXHIBIT B	ORDER REDUCING SENTENCE
EXHIBIT C	DETAINER DOCUMENTS <ul style="list-style-type: none"><li>• Evidence of Agent’s Authority to Act for Receiving State</li><li>• Detainer</li><li>• Offer to Deliver Temporary Custody</li></ul>
EXHIBIT D	DETAINER DOCUMENTS <ul style="list-style-type: none"><li>• Request for Final Disposition of Detainer and Certificate of Inmate Status</li><li>• Prosecutor’s Acceptance of Temporary Custody Offered in Connection With a Prisoner’s Request for Disposition of a Detainer</li></ul>
EXHIBIT E	MOTIONS FILED IN DISTRICT COURT <ul style="list-style-type: none"><li>• Motion to Dismiss</li><li>• Order Denying Defendant’s Motion to Dismiss</li><li>• Petition to Reconsider Order Denying Defendant’s Motion to Dismiss, or in the Alternative, to Clarify the Record</li><li>• Order Denying Defendant’s Petition to Reconsider Order Denying Motion to Dismiss</li><li>• Motion for Hearing on Petition for a Writ of Habeas Corpus</li></ul>
EXHIBIT F	RELEVANT PORTIONS OF THE BRIEF OF APPELLANT
EXHIBIT G	RELEVANT PORTIONS OF THE BRIEF OF APPELLEE
EXHIBIT H	RELEVANT PORTIONS OF THE APPELLANT’S REPLY BRIEF
EXHIBIT I	WYOMING SUPREME COURT DECISION
EXHIBIT J	ORDER OF NINTH JUDICIAL DISTRICT DENYING PREVIOUS PETITION
EXHIBIT K	PREVIOUS PETITION FOR WRIT OF HABEAS CORPUS FILED IN NINTH JUDICIAL DISTRICT