Circuit Court for St. Mary's County
Case No. C-18-CR-18-000333

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 70

September Term, 2020

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TREVIS LEMAR BUTLER

v.

STATE OF MARYLAND

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Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: July 7, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for St. Mary's County, Trevis Lemar Butler, appellant, was convicted of two counts of first-degree assault, two counts of second-degree assault, two counts of threatening to harm a witness with the intent to retaliate, fourth-degree sexual offense, and stalking. He raises two issues on appeal: (1) whether the court abused its discretion in finding that there was no good cause for defense counsel's failure to file a timely motion to sever, and (2) whether the trial court abused its discretion when it denied his motion to recuse. For the reasons that follow, we shall affirm.

## I. MOTION TO SEVER

On November 5, 2018, Mr. Butler was charged with multiple offenses against a single victim, which were alleged to have occurred in November 2017, December 2017, and from September 21 through October 3, 2018. Defense counsel made his first appearance in the case on December 4, 2018. At a status hearing on April 12, 2019, defense counsel made an oral motion to sever the 2017 incidents from the 2018 incidents. The prosecutor informed the court that he would consent to the motion, but only if Mr. Butler agreed to waive the *Hicks* date because otherwise the State would have to try multiple cases in a short window of time. Mr. Butler refused to waive the *Hicks* date and, therefore, the State opposed the motion. Defense counsel acknowledged that the motion was untimely but told the court that the only reason he had not filed the motion earlier was because there was an outstanding plea offer that Mr. Butler had been considering. The parties and the court did not discuss the merits of the motion to sever. Following the hearing, the court issued a written order denying the motion, finding that it was untimely and that defense counsel had not established good cause to excuse the untimely filing because he had not

established that the "filing of a timely motion to sever would have resulted in the [State] rescinding the [plea] offer."

On appeal, Mr. Butler concedes that the motion to sever was not timely because Maryland Rule 4-252(b) requires such motions to be "filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-212(c)[.]"[1] He nevertheless contends that the court abused its discretion when it refused to find good cause for his failure to comply with the Rule. Specifically, he asserts that (1) the failure to file a timely motion was "borne out a desire to save all litigants, and the court, time"; (2) the State was not surprised by the motion; and (3) it's unlikely the State would have been prejudiced if the motion was granted despite its objection because the court "would have been justified in finding good cause to postpone the cases past *Hicks*, regardless of [appellant's] refusal to 'waive' his *Hicks* date."

In *Pulley v. State*, 43 Md. App. 89, 97 (1979), this Court held that "[t]he failure to make [a] mandatory [motion] within the prescribed time limits [of Rule 4-252], absent good cause to forgive the dereliction, bars the claim where the claim arguably is pregnant with constitutional merit just as surely as where the claim is utterly bereft of merit." The defendant has the burden to show good cause. *Pugh v. State*, 103 Md. App. 624, 655, 654 (1995). And the trial court's determination regarding whether the defendant met that burden will not be reversed absent a clear abuse of discretion. *Id*. at 656.

[1] Although defense counsel filed an "omnibus motion" in December 2018 that generally requested the court to "sever offenses and any codefendant's cases," Mr. Butler concedes that this motion did not satisfy the requirements of Rule 4-252.

As an initial matter, the question before the court in deciding whether to allow the untimely motion to sever was not whether the State was prejudiced but whether defense counsel had established good cause for not complying with the time requirements of Rule 4-252. And in any event, despite Mr. Butler's claim to the contrary, there is no indication that the court would have postponed the trial dates had the motion to sever been granted over the State's objection. Moreover, with respect to defense counsel's explanation for not filing the motion earlier, the alleged desire to save the litigants and the court time did not necessarily excuse his failure to timely file the motion, considering that (1) filing the motion would not have required the court to rule on it if Mr. Butler had ultimately decided to accept the plea offer, and (2) defense counsel did not demonstrate that the State would have rescinded the plea offer if the motion had been timely filed. Therefore, we perceive no abuse of discretion in the court's finding that good cause had not been shown to excuse the failure to comply with Rule 4-252.

## II. MOTION TO RECUSE

Mr. Butler claims that the trial judge abused its discretion in denying his motion to recuse. We disagree. The motion to recuse was based on the fact that the trial judge had represented Mr. Butler when he was a juvenile in "either 1995-96" on a second-degree assault charge and then a second time when he had "violated [his] home monitor" on that charge. Mr. Butler also indicated that he had tried to hire the trial judge on another occasion when he "got in trouble in 2000" but that the trial judge "didn't think that it was in his best interest" to represent Mr. Butler in that case and referred him to another attorney. In denying the motion to recuse, the trial judge stated that he remembered Mr. Butler's name

but did not remember representing Mr. Butler and had no particular recollection of any of his prior cases. The judge also indicated that "I certainly am going to hold nothing against [Mr. Butler] from my representation of him or anything I would have learned there" and that "nothing I have done on behalf of or with [him] would affect [the trial or] my sentencing."

"Generally speaking, a judge is required to recuse himself or herself from a proceeding when a reasonable person with knowledge and understanding of all the relevant facts would question the judge's impartiality." *Matter of Russell*, 464 Md. 390, 402 (2019) (citation omitted). However, judges are presumed to be impartial and the burden to overcome the presumption of impartiality rests with the person seeking recusal. *Karanikas v. Cartwright*, 209 Md. App. 571, 579 (2013). We review whether a judge should have recused himself or herself under the abuse of discretion standard. *Surratt v. Prince George's County*, 320 Md. 439, 465 (1990).

"[J]udges are not disqualified from an action simply because it involves a former client as a party." *Sharp v. Howard County*, 327 Md. 17, 36 (1992). Moreover, the trial judge in this case specifically indicated that he did not remember anything about Mr. Butler's prior cases and that he would not hold his prior representation of Mr. Butler against him at trial or sentencing. Therefore, we are not persuaded that the judge abused his discretion in denying Mr. Butler's motion to recuse.

**JUDGMENTS OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**