Circuit Court for Talbot County
Case No. C-20-CR-21-000064

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 398

September Term, 2022

KEVIN HAMILTON MANNING

v.

STATE OF MARYLAND

Arthur,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 9, 2023

"Under a State statute and related court rule, . . . a criminal trial in a circuit court must commence within 180 days of the first appearance of the defendant or defense counsel in that court, a deadline known as the 'Hicks date.'" *Tunnell v. State*, 466 Md. 565, 569 (2020). "Unless the defendant consents to a trial date beyond the Hicks date, a continuance of the trial beyond the Hicks date may be granted only for 'good cause.'" *Id.* This so-called "Hicks rule" derives its name from *State v. Hicks*, 285 Md. 310, 318 (1979), which held that the sanction for noncompliance is dismissal of the criminal charges.

This case principally concerns whether the Circuit Court for Talbot County violated the Hicks rule in setting a trial date beyond the Hicks date when no earlier dates were available because of the enormous backlog of criminal cases that resulted from months of court closures during an unprecedented public health emergency – the COVID-19 pandemic.

BACKGROUND

On March 25, 2021, Manning was indicted on charges of second-degree rape and other, related offenses.[1] Defense counsel entered his appearance on March 25, 2021.

Maryland Code (2001, 2018 Repl. Vol.), § 6-103(a)(2) of the Criminal Procedure Article ("CP"), provided that Manning's trial date could "not be later than 180 days after" the appearance of counsel. Similarly, Maryland Rule 4-271(a) required that the trial date

[1] In his brief, Manning states that he was charged with having sexual intercourse with his stepsister in 2009, when she was 13 and he was 19.

"be not later than 180 days after" the appearance of counsel. The parties agree that, accounting for the court closures that resulted from the COVID-19 pandemic, the one hundred eightieth day – the Hicks date – fell on October 23, 2021.

Under CP § 6-103(b), however, the county administrative judge or that judge's designee could, on motion or on the court's own initiative, grant a change of the trial date in a circuit court for "good cause shown." Similarly, under Rule 4-271(a), the county administrative judge or that judge's designee could grant a change of the trial date "[o]n motion of a party, or on the court's initiative, and for good cause shown[.]"

In this case, the court convened a status conference to set a trial date on June 4, 2021. A retired judge presided at the status conference.

At the status conference, the judge first determined that the parties expected the trial to last for two days. The judge asked the clerk for the first two days that were available. Because of the backlog that resulted from the cancellation and postponement of criminal trials during the pandemic, the first two days available were May 4 and May 5, 2022, more than six months after the Hicks date.

The judge asked counsel whether they were available on those dates. Counsel for the State responded that she was. Counsel for Manning responded that he was available as well, but that he objected to a trial date that was more than 180 days later than his initial appearance. The judge replied that he had no control over the backlog, that very

few jury trials had occurred since the pandemic began more than a year earlier, and that that there was "good cause" to schedule the trial to begin after the 180 days had expired.[2]

After the Hicks date had passed, Manning filed a written motion to dismiss. In his motion, he argued, among other things, that the court violated the Hicks rule in setting the initial trial date more than 180 days after his attorney had entered his appearance. At a hearing on the motion, which occurred before the administrative judge, defense counsel stated that he had seen nothing to indicate that the retired judge had been the administrative judge's designee.

In an order signed by the administrative judge on March 31, 2022, the circuit court denied the motion to dismiss. In reaching its decision, the court reasoned that the decision to extend the trial date beyond the 180-day deadline was neither in bad faith nor an abuse of discretion, but rather "a sober recognition of the availability of courtrooms to try the case as a result of the COVID shutdowns." The court did not address the issue of whether the retired judge was the administrative judge's designee.

On May 4, 2022, Manning entered into a conditional guilty plea, which allowed him to appeal the denial of his motion to dismiss. Thereafter, he noted this timely appeal.

QUESTION PRESENTED

Manning presents one question for appellate review: "Did the motions court err by denying Appellant's motion to dismiss based on a *Hicks* violation?"

[2] It appears that, while he was awaiting trial, Manning was on home release, but was required to wear a monitor.

We see no error or abuse of discretion in the denial of the motion. Nonetheless, we shall remand the case, without affirming, reversing, or modifying the judgment, because it is not entirely clear whether the retired judge was the administrative judge's designee. *See* Md. Rule 8-604(d)(1). On remand, the court shall make an express finding on that subject.

DISCUSSION

In his commendably concise briefs, Manning makes two central contentions. First, he argues that he is entitled to have the charges against him dismissed because the retired judge set an initial trial date that was after the Hicks date. Second, he argues that the judge's finding of good cause is "both void and irrelevant," because, he says, the judge was not the administrative judge or his designee, and because good cause findings apply only to postponements, not to initial trial dates.

Manning's first argument presents a pure question of law: Did the Hicks rule require the judge to set a trial date before the Hicks date (even though none were available) before he could postpone the trial until after the Hicks date? Accordingly, we review the circuit's decision without deference.

In our judgment, Manning's first argument elevates form over substance. In theory, the judge could have set a fictitious trial date that fell on or before the Hicks date. In theory, the judge could then have changed the fictitious date, on his own motion, because the COVID-related backlog made it impossible to try the case on that date. Manning does not dispute that because of the backlog of criminal cases that had already

been postponed or delayed as a result of the pandemic, the court would have had good cause to change a fictitious trial date to another date after the Hicks date. *See, e.g*., *State v. Frazier*, 298 Md. 422, 461-62 (1984). Thus, the first question in this case is whether the charges against Manning must be dismissed because the retired judge failed to set the trial for a date on which it could not possibly occur before he, for good cause, set it for another date after the Hicks date.

Here, we take note of the maxim that the law will not require a useless act ("*lex non cogit ad inutilia*"). It would have been useless for the retired judge to schedule the trial to begin on a date that everyone knew was fictitious before he nominally postponed the trial, for good cause, to a date on which it could realistically be expected to begin. Thus, we hold that, in the unique circumstances of this case, in which the worst public health emergency in a century made it impossible to set a realistic trial date before the Hicks date had passed, the court did not err in finding good cause to begin the trial after the Hicks date without first formally setting a fictitious trial date. Instead, the court substantially complied with the Hicks rule. The court certainly did not violate the policy underlying the rule – "the prompt disposition of criminal cases" (*Tunnell v. State*, 466 Md. at 571-72) – when it set the trial for the very first day that was available on the court's congested calendar.

In advocating for a contrary conclusion, Manning relies prominently on *Franklin v. State*, 114 Md. App. 530 (1997). In that case, this Court held that criminal charges had to be dismissed because the circuit court's case assignment office had set an initial trial

date after the Hicks date. *Id*. at 536. *Franklin* does not stand for the proposition that *a judge* is prohibited from finding good cause to set a trial date after the Hicks date when, for example, it is impossible to set the initial trial date before the Hicks date because of a backlog of criminal cases resulting from a year of pandemic-related court closures.

We turn to the question of whether the retired judge was the administrative judge's designee and, thus, whether he had the authority to postpone the trial for good cause. If the retired judge was not the designee, the charges must be dismissed. *See Capers v. State*, 317 Md. 513, 520-21 (1989).

Talbot County has only one judge, who, by necessity, is also the administrative judge. It is difficult to imagine that the retired judge was setting trial dates in criminal cases in Talbot County unless the administrative judge had authorized him to act as his designee. Nonetheless, the matter is not entirely free of doubt, in part because when the administrative judge denied Manning's motion to dismiss, he did not clearly state that the retired judge had been his designee. Consequently, we shall remand the case to the circuit court, without affirming, reversing, or modifying the judgment. *See* Md. Rule 8-604(d)(1). The purpose of the remand is for the circuit court to make an express determination about whether the retired judge was the administrative judge's designee when the retired judge scheduled Manning's trial.

CASE REMANDED, WITHOUT AFFIRMANCE, REVERSAL, OR MODIFICATION, FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE DIVIDED

EQUALLY BETWEEN APPELLANT AND TALBOT COUNTY.