Circuit Court for Harford County
Case No. 12-K-08-2001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1130

September Term, 2017

STATE OF MARYLAND

v.

CHRISTOPHER BEIDERWIEDEN

Woodward, C.J.,
Reed,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: March 26, 2018

On November 25, 2008, the State charged appellee, Christopher Beiderwieden, by a five-count indictment with: 1) robbery with a dangerous weapon; 2) robbery; 3) theft over $500; 4) reckless endangerment; and 5) second-degree assault. Prior to trial, appellee raised the issue of his competency to stand trial, and the Circuit Court for Harford County found appellee competent. At trial, appellee waived his right to a jury trial, and requested that the court bifurcate the proceedings on the issues of guilt and criminal responsibility. The court granted the request and found appellee guilty of counts one, two, three, and five. Additionally, the court found appellee criminally responsible. Prior to sentencing, however, appellee requested another competency evaluation. This time, the court found appellee incompetent, and after five years during which the court continued to find appellee incompetent, the court dismissed appellee's charges. The State appealed and raises one question for our review: Did the circuit court err when it dismissed [appellee's] charges?

We hold that the circuit court did not err in dismissing appellee's criminal charges. We remand, however, because the court should have initiated civil commitment proceedings as mandated by statute.

FACTS AND PROCEEDINGS

On October 20, 2008, appellee approached the window of the Joppatowne branch of Bank of America and pressed a note against a teller's window, requesting large bills and indicating that he had a bomb. The teller did not see a bomb, but did observe an earphone wire leading down into appellee's jacket. The teller gave appellee approximately $27,000.

As stated above, following indictment, the circuit court found appellee competent to stand trial. Appellee waived his right to a jury trial, and after a two-day bench trial, on February 16, 2012, the trial court found appellee guilty of: robbery with a dangerous weapon; robbery; theft over $500; and second-degree assault. At the sentencing hearing, but prior to receiving his sentence, appellee requested a competency evaluation. The court granted appellee's request for an evaluation, and at a competency hearing a month later, the court found appellee incompetent to stand trial. The court held periodic competency review hearings subsequent to its finding of incompetence, each time concluding that appellee remained incompetent.

On May 23, 2017, appellee moved to dismiss his charges pursuant to Md. Code (2001, 2008 Repl. Vol., 2017 Supp.) § 3-107 of the Criminal Procedure Article ("CP"), asserting that the passage of five years mandated dismissal of the charges. On June 9, 2017, the court found that appellee remained incompetent. Following a hearing on August 2, 2017, the court dismissed appellee's charges. The State noted a timely appeal.

STANDARD OF REVIEW

Because the State argues that the trial court incorrectly interpreted the relevant portions of the Criminal Procedure Article in dismissing appellee's charges, we review the court's decision de novo. *Comptroller of Treasury v. Two Farms, Inc*., 234 Md. App. 674, 680 (2017).

DISCUSSION

The State argues that the trial court erred in dismissing appellee's charges under CP § 3-107 because that section is silent on whether charges may be dismissed after the guilt or innocence phase of a criminal trial is completed, and jeopardy has attached to the defendant. Although the State is permitted to refile charges after a CP § 3-107 dismissal, the State contends that it should not have to prove appellee's guilt a second time. As we will show, the plain meaning of the relevant statutes makes clear that the trial court did not err in dismissing appellee's criminal charges.

The State also argues that the trial court should have civilly committed appellee pursuant to CP § 3-106(d). Although we cannot conclude on this record that appellee should be civilly committed, we hold that the court should have initiated such proceedings and accordingly remand on this issue.

Dismissal of Charges under CP § 3-107

"We always begin 'our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.'" *State v. Ray*, 429 Md. 566, 576 (2012) (quoting *Friedman v. Hannan*, 412 Md. 328, 337 (2010)). If the plain meaning is clear and unambiguous, we need look no further. *Id*. When the language in the statute is "subject to more than one interpretation, or when the language is not clear when it is part of a larger statutory scheme, we try to resolve that ambiguity by

looking to the statute's legislative history, case law, and statutory purpose, as well as the structure of the statute." *Id*. (internal quotation marks omitted).

The plain language of CP § 3-107 provides:

> (a) Whether or not the defendant is confined and unless the State petitions the court for extraordinary cause to extend the time, the court shall dismiss the charge against a defendant found incompetent to stand trial under this subtitle:
>
> > (1) when charged with a felony or a crime of violence as defined under § 14-101 of the Criminal Law Article, after the lesser of the expiration of 5 years or the maximum sentence for the most serious offense charged; or
> >
> > (2) when charged with an offense not covered under item (1) of this subsection, after the lesser of the expiration of 3 years or the maximum sentence for the most serious offense charged.
>
> (b) Whether or not the defendant is confined, if the court considers that resuming the criminal proceeding would be unjust because so much time has passed since the defendant was found incompetent to stand trial, the court shall dismiss the charge without prejudice. However, the court may not dismiss a charge without providing the State's Attorney and a victim or victim's representative who has requested notification under § 3-123(c) of this title advance notice and an opportunity to be heard.

The State argues that a court can only dismiss a charge against a defendant pursuant to CP § 3-107 before jeopardy attaches. This reading is not supported by the plain language of the statute. The word "jeopardy" does not appear in CP § 3-107. Instead, CP § 3-107(a) mandates dismissal within a certain time frame based upon the type of offense charged. Under CP § 3-107(b), that dismissal is without prejudice. CP § 3-107 does not discuss at what stage in the trial a court may dismiss the charge—it only addresses what to do with a defendant found incompetent to stand trial upon the expiration of enumerated time periods.

The State contends that, based on a plain reading of "incompetent to stand trial," we should conclude that CP § 3-107 only allows for dismissal "before or during a trial." To that end, the State, in its reply brief, relies on the American Heritage Dictionary to define the word "trial" to mean the factfinder's determination "of guilt or innocence with respect to the criminal charges." Construing these definitions, the State argues that a court may only dismiss charges before the finding of guilt or innocence. We soundly reject the State's narrow interpretation.

CP § 3-104(a) provides that "before or during a trial," the court may determine whether a defendant is incompetent to stand trial. CP § 3-104(c) provides that, "[a]t any time before final judgment" the court may reconsider whether a defendant is incompetent to stand trial. In *Chmurny v. State*, the Court of Appeals made clear, "A conviction does not occur in a criminal case until sentence is imposed on a verdict of guilty. *That is when judgment is entered*." 392 Md. 159, 167 (2006) (emphasis added). Because there is no final judgment under Maryland law until a sentence is imposed, a court may: (1) consider competency at any time during a trial—which includes any time prior to sentencing—under CP § 3-104(a); and (2) reconsider competency at any time prior to "final judgment," i.e. sentencing, under CP § 3-104(c). There is no support for the State's argument that a court may not dismiss criminal charges after a factfinder has determined the defendant's guilt or innocence. And, contrary to the State's assertion, the court's ability to consider

competence under CP § 3-104 is not limited by the attachment of jeopardy. Here, the court reconsidered appellee's competency prior to sentencing as permitted by CP § 3-104(c). [1]

We are further bolstered in our interpretation of CP § 3-104(c) in light of its previous iteration's plain meaning. The original statutory language for CP § 3-104(c) provided: "*At any time during the trial and before verdict*, the court may reconsider the question of whether the defendant is incompetent to stand trial." (Emphasis added). In 2006, the language was amended to read "*At any time before final judgment*, the court may reconsider the question of whether the defendant is incompetent to stand trial." (Emphasis added). This change makes clear that, under the current version of CP § 3-104(c), a court may find a defendant incompetent even after the verdict, or, as the State frames the issue, even after jeopardy has attached. We note that the Court of Appeals acknowledged the 2006 amendment to CP § 3-104(c) in *Sibug v. State*, 445 Md. 265, 298 n.15 (2015), and, although not material to its decision, the Court did not disavow the trial court's authority to consider Sibug's competency after a guilty jury verdict, but prior to sentencing. *Id*. at 283.

Here, the trial court found appellee incompetent to stand trial prior to sentencing. After five years, the court dismissed the charges. Under the statute's plain meaning, the

[1] In its reply brief, the State argues that, by its express terms, CP § 3-104(c) only permits the court to "reconsider" the defendant's competency prior to final judgment. To that end, the State claims that "[t]he trial court could not reconsider a claim where it had not been raised before[.]" The State misinterprets the record on this point. Appellee raised the issue of competency at a hearing on September 29, 2009. The court found him competent to stand trial on December 6, 2010. The issue of competency, therefore, was raised prior to trial, and the court was permitted to reconsider it before final judgment.

concept of jeopardy did not restrict the court's ability to find appellee incompetent or ultimately dismiss the charges after five years had elapsed. We therefore conclude that the trial court properly dismissed appellee's charges pursuant to CP § 3-107.

As a policy argument, the State contends that requiring it to file new charges when jeopardy has attached is inconsistent with legislative intent and the interests of justice. The State notes that if it were to file new charges, it "would likely [en]counter a double jeopardy-based motion to dismiss." Because the State has not filed new charges, it has not yet encountered a "double jeopardy-based motion to dismiss" nor has it suffered an adverse ruling that warrants appellate review. "It is well established that the role of the [appellate court] is not to decide moot or abstract questions or to render advisory opinions." *Montgomery Cty. Career Fire Fighters Ass'n v. Montgomery Cty*., 210 Md. App. 200, 209 (2013).[2]

Civil Commitment

Finally, the State argues that appellee should have been civilly committed when the court dismissed appellee's criminal charges. While we decline to hold that appellee should have been civilly committed as a matter of law at the August 2, 2017 hearing, we hold that the trial court should have considered whether civil commitment was appropriate under CP § 3-106(d).

[2] In its reply brief, the State also argues that federal law permits provisional sentencing, and that such a sentence would not violate appellee's constitutional rights. Maryland law, however, does not allow for provisional sentencing.

At the August 2, 2017 hearing, the trial court stated,

> I still am a little bit concerned and frustrated that the Department hasn't initiated this civil commitment. I don't believe it is appropriate for me to sign an order civilly committing him because I believe he is entitled to due process on that issue. Whether or not the action that I take today changes that and they proceed or whether they just simply, as [the State] opined, that they would just continue to operate with him as regards the other cases and the other reasons he is committed I guess is a decision that they have to make, but I think that, if there were no other cases, it would be appropriate for the Department to have already, and if not already at least at the time that I sign this order, that they would commence the civil commitment proceedings.
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> I'm satisfied that [appellee] does suffer from a mental illness, that he also is a danger to himself and others, that he is not amenable to treatment, that he is not essentially going to get better, and I don't believe there is a less restrictive form of intervention, and he is not voluntarily willing to commit himself to a facility.
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> Were this the forum of a civil commitment, I would certainly sign an order for an involuntarily [sic] commitment, but I don't believe procedurally we're at that point today. I do believe the requirements of 3-107 are satisfied and I will I [sic] dismiss the underlying case.

Despite finding appellee incompetent, the court declined to initiate civil commitment proceedings, acknowledging that appellee would be entitled to due process. Apparently, the court believed that it could only consider civil commitment upon some action by the Department of Health. We disagree that the court was so confined, and conclude that the court should have, pursuant to CP § 3-106(d), initiated proceedings to consider appellee's civil commitment. We explain.

CP § 3-106(d) states that, "At a competency hearing under subsection (c) of this section, if the court finds that the defendant is incompetent and is not likely to become competent in the foreseeable future, the court *shall*" either civilly commit the defendant if

it makes certain findings, or order confinement as a resident in a Developmental Disabilities Administration facility. (Emphasis added). The mandatory nature of the statute required the court to take some action upon finding appellee incompetent and unlikely to become competent. In *Powell v. Md. Dep't of Health*, the Court of Appeals explained,

> If a defendant remains incompetent to stand trial, the court must eventually decide whether to take other action. If it appears that the defendant remains incompetent and is not restorable—*i.e.*, "not likely to become competent in the foreseeable future"—the court may civilly commit the defendant if certain criteria are met. CP § 3-106(d).

455 Md. 520, 531 (2017).

Here, the trial court failed to take any action on the issue of civil commitment. Although it stated that, "were this the forum of a civil commitment" the court would have civilly committed appellee, the court declined to formally determine whether civil commitment or other confinement was appropriate. The State asks us to hold that, because the court made the requisite findings under CP § 3-106(d), appellee should be civilly committed. We decline to do so because the court believed it could not proceed with civil commitment and therefore made no formal decision on this issue. The court stated, "I don't believe it is appropriate for me to sign an order civilly committing [appellee] because I believe he is entitled to due process on that issue." Although we disagree with the court's view that it could not consider civil commitment at the August 2, 2017 hearing, we agree that appellee is entitled to due process at his civil commitment proceeding. Accordingly,

a remand is necessary for the court to hold a hearing to determine whether appellee should be civilly committed pursuant to CP § 3-106(d). *See id.*

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY DISMISSING APPELLEE'S CRIMINAL CHARGES AFFIRMED. CASE REMANDED TO THE CIRCUIT COURT FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY HARFORD COUNTY.