Circuit Court for St. Mary's County
Case No. 18-K-16-000324

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1438

September Term, 2017

PATRICK HENRY BUSH

v.

STATE OF MARYLAND

Friedman,
Beachley,
Krauser, Peter B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, J.

Filed: September 28, 2018

Convicted, after a bench trial, in the Circuit Court for St. Mary's County, of first-degree murder, second-degree murder, armed robbery, and theft of between $10,000 and $100,000, Patrick Bush, appellant, raises a single issue on appeal, which, in his words, is: "Did the trial court err by denying [his] motion to dismiss after his case was postponed beyond 180 days without a proper finding of good cause?" For the reasons that follow, we conclude that the court did not err in denying appellant's motion to dismiss and, accordingly, affirm.

FACTS

Appellant's first court appearance was on September 14, 2016. His trial was thereafter scheduled to commence on January 18, 2017, well within the 180 days, mandated by Maryland law, as that time period was due to expire two months later, on March 13, 2017 (which we shall also refer to as the "*Hicks* date"). But, six days before his trial was to begin, appellant, on January 12, 2017, moved for a postponement of his trial date so that he could obtain new counsel. The Honorable Karen H. Abrams, then serving as the administrative judge, denied that request. Then, after several heated exchanges between the appellant and the court as well as between appellant and his trial counsel, appellant's trial counsel, assistant public defender Matthew Connell, Esquire, noting that an earlier "jail visit" with appellant had, in his words, "imploded even worse than what you see here in court today," expressed his concern, to the court, as to whether appellant was competent to stand trial and indicated that he was going to request a mental competency evaluation. The State agreed that a mental competency evaluation would be appropriate, under the circumstances. The next day, appellant's trial counsel filed a "Suggestion of

Incompetence," requesting that evaluation, whereupon the court ordered that a mental competency evaluation be performed by the Department of Health and Mental Hygiene and that, "[w]ithin sixty (60) days hereof, the Department shall forward its report to" the court and counsel.

The case was then "administratively postponed" or, as the court put it, "taken out of assignment" until appellant's competency to stand trial could be determined. After appellant's mental competency evaluation was completed, the Department filed, with the court, its report on January 31, 2017. Six days later, at a hearing on February 6, 2017, Judge Abrams found appellant competent to stand trial and, after discussing with appellant his reasons for wishing to discharge Mr. Connell, the judge advised him that Mr. Connell was "out of the case" and that his case had been reassigned to another assistant public defender, Edie Cimino, Esquire, who was not present at that proceeding.

Notably, during that hearing, Mr. Connell expressed the belief that the 180-day deadline (which is also commonly referred to as the "*Hicks* deadline") was "tolled" until completion of the competency evaluation and the court agreed. Then, turning to appellant, the court emphasized that a waiver of the 180-day rule might be required, for good cause, if his new counsel, Ms. Cimino, was unavailable for trial on those days, stating:

> And the one thing, Mr. Bush, you have to understand, that we are going to do our very best to get that court date as quickly as possible. If for any reasons we can't, then we're not going to have any choice but to waive for cause. We are not going to have any choice. But I am going to avoid that if I possibly, possibly can.

Appellant responded, "Please do."

When Mr. Connell thereafter asked the court "how much time was available" under *Hicks*, the court instructed counsel, "you-all can do the calculations and figure it out." Counsel thereupon proceeded to the assignment office, where a new trial date of April 3-6, 2017, was selected apparently without objection and both sides agreed that the new *Hicks* date was April 6, 2017. Then, on February 21, 2017, just two weeks later, appellant filed a motion to discharge his newly appointed trial counsel, Ms. Cimino, and to proceed *pro se*, citing Ms. Cimino's lack of availability on the new trial dates and his own desire not to extend the date beyond the 180-day deadline of April 6th.

On March 3, 2017, another assistant public defender, Luke Woods, Esquire, filed an entry of appearance as co-counsel for appellant. On that same day, Ms. Cimino filed a motion to postpone the April trial date, citing her and Mr. Woods's lack of availability and their need for additional time to prepare an adequate defense.

Seven days later, on March 10, 2017, at a hearing on the motion to postpone, appellant formally withdrew his motion to discharge Ms. Cimino, who then informed the court that appellant would not waive *Hicks* that day but would nonetheless be willing to do so in two weeks. Specifically, Ms. Cimino stated:

> [I]f we were to return in two weeks' time, [appellant] would be prepared at that point to waive *Hicks.* So that the Court is assured that scheduling a trial date outside of that 180-day deadline won't be a problem in terms of the integrity of the record.

When appellant's trial counsel then asked appellant if that was an accurate representation of his wishes, appellant replied, "Correct. Correct." Then, at the next hearing, on March 27, 2017, appellant agreed to waive *Hicks* and to allow his attorney to

request a continuance because she would neither be available, nor prepared, for trial on April 3, 2017. The court granted the defense's request for a continuance, over the State's objection, and set a new trial date for June 26, 2017.

On May 4, 2017, appellant, once again, filed a motion to discharge his counsel and proceed *pro se*, and, then, on May 30, 2017, a motion to dismiss all of the charges against him based on the initial rescheduling of his trial date, on February 6th, so that it fell beyond its initial 180-day deadline, after a mental competency evaluation was ordered. Then, on June 22, 2017, at a hearing on appellant's request to discharge counsel, before the Honorable David W. Densford, appellant explained that he wished to discharge both Ms. Cimino and Mr. Woods as his trial counsel, because he disagreed with them as to the defense they planned to present, on his behalf, at trial. The court found that appellant provided "meritorious reasoning" for his desire to discharge counsel and granted his discharge request. Appellant then waived his right to a jury trial.

The next day, appellant, invoking his previously filed motion to dismiss all charges, asserted that the administrative judge (Judge Abrams) had erred by postponing the trial of his case for a competency evaluation in mid-January 2017, by taking his case "out of assignment," and by not rescheduling it for trial before the evaluation was completed within the 180-day period, which was due to expire on March 13, 2017. Judge Densford denied that motion, finding that the administrative judge had acted with "good cause" in taking appellant's case "out of assignment." The judge observed that, when a competency evaluation is ordered, it is not always practical to set a trial date due to an inability to predict when the competency evaluation will be completed. He further noted that, since a five-

week delay, for a mental competency evaluation, was deemed "good cause," in *Thompson v. State*, 229 Md. App. 385 (2016), the twenty-four-day delay to perform such an evaluation, in the instant case, must also constitute "good cause."

Appellant also asserted, in support of his motion to dismiss, that, because the State failed to request a postponement beyond the 180-day deadline, the court should not have ordered such an extension. The circuit court, however, concluded otherwise, noting that the State had no such obligation and that, in any event, the twenty-four-day extension was due to a request, by appellant's trial counsel, for a competency evaluation. It further noted, that appellant's request to discharge counsel "at every turn" may have been a contributing factor, though admittedly not mentioned by Judge Abrams, as grounds for her decision to postpone the trial of appellant's case and take that case "out of assignment." It, therefore, denied appellant's motion to dismiss.

Appellant's bench trial began on June 26, 2017. At the conclusion of that trial, he was convicted, by the circuit court, of first-degree murder, second-degree murder, armed robbery, and theft between $10,000 and $100,000 and thereafter sentenced to a term of life imprisonment, without parole, for first-degree murder and to a term of twenty years of imprisonment for armed robbery and fifteen years of imprisonment for theft, both of which were to run consecutive to his term of life imprisonment.

DISCUSSION

Appellant contends that the circuit court erred in denying his motion to dismiss, after the trial of his case was postponed, without good cause, so that it fell beyond its 180-day deadline of March 13th. That motion should have been granted, he claims, for three

reasons: first, because, in mid-January of 2017, "the court erred by simply taking his case out of assignment when the competency evaluation was ordered, rather than setting a new trial dated within the 180 days"; second, because the court, after finding him competent to stand trial, at the February 6th hearing, erred by not rescheduling his trial to occur on or before the March 13th 180-day deadline; and, third, because the court erred in holding that the request for competency evaluation "tolled" the running of the 180-day time period.

I.

To begin with, in *State v. Hicks*, the Court of Appeals declared that when the State fails to bring a criminal case to trial within the period prescribed by Maryland law, without good cause, the appropriate sanction is dismissal of the pending criminal charges. 285 Md. 310, 318 (1979). Consistent with *Hicks*, Maryland Rule 4-271(a)(1) and Section 6-103(a)(2) of the Criminal Procedure Article of the Maryland Code require that a date for trial of a criminal case, in the circuit court, shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court, and shall be no later than 180 days after the earlier of those events. "The purpose of the 180-day rule," we have noted, "is to protect the societal interest in the prompt trial of criminal cases; the benefits that the rule confers upon defendants are incidental." *Marks v. State*, 84 Md. App. 269, 277 (1990).

However, the foregoing rule and statute permit extensions of the trial date beyond the 180-day period, by the county administrative judge or a designee of the judge, "for good cause shown." Md. Rule 4-271(a)(1); Crim. Proc. Section 6-103(b)(1). "Good cause" exists when there is both "good cause for not commencing the trial on the assigned

trial date" and "good cause for the extent of the delay." *Reed v. State*, 78 Md. App. 522, 534 (1989) (quoting *State v. Frazier*, 298 Md. 422, 448 (1984)). And, "with regard to both components of the 'good cause' requirement . . . the trial judge (as well as an appellate court) shall not find an absence of good cause unless," avowed the Court of Appeals, "the defendant meets the burden of demonstrating either a clear abuse of discretion or a lack of good cause as a matter of law." *State v. Brown*, 355 Md. 89, 98 (1999) (quoting *State v. Frazier*, 298 Md. 422, 454 (1984)). Moreover, "[a] determination by the administrative judge to extend the trial date beyond 180 days is given 'wide discretion' and carries a 'heavy presumption of validity'" and is "rarely subject to reversal on review." *Fields v. State*, 172 Md. App. 496, 521 (2007).

II.

As observed by the court below and now conceded by appellant, a mental competency examination is "good cause" for extending a trial date beyond 180 days, *Thompson v. State*, 229 Md. App. 385, 399 (2016), given that "a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." *Kennedy v. State*, 436 Md. 686, 692 (2014). It therefore follows that "[o]nce the issue of a defendant's competency has been raised, the proceedings cannot continue until the trial judge determines that the defendant is competent to stand trial beyond a reasonable doubt." *Thompson*, 229 Md. App. at 399.

Appellant's trial was originally set for January 18, 2017, but his counsel requested a competency evaluation, five days earlier, on January 13th, because of appellant's

seemingly irrational conduct both before and during the January 12th hearing. Consequently, the circuit court had "good cause" to postpone the January 18th trial, so that a competency evaluation could be performed and then a judicial determination made as to appellant's competence to stand trial. *Id*. Appellant does claim, however, that the court, instead of taking his case "out of assignment," should have just set a new trial date, within the mandated 180-day period, before the competency evaluation was performed.

First of all, the court was not required to do so, as the competency evaluation, which was requested by appellant's counsel, constituted "good cause" for extending his trial date beyond the 180-day deadline. *Id*. Indeed, as the court below pointed out, if the five-week delay for a competency evaluation constituted "good cause," as we held in *Thompson*, then, surely, the twenty-four-day delay for such an evaluation, as occurred here, must also constitute "good cause" for non-compliance with the 180-day rule. Moreover, the court had little choice but to take the case "out of assignment," as it did not know, at that time, when the evaluation report would be sent, within the 60 days allotted, by the court, in its evaluation order. If it were provided to the court and counsel close to or on the 60th day, neither the competency hearing that was to follow nor, certainly, the trial of this matter could have been scheduled to take place within the 180-day time period that ended on March 13th, since that period time would have already expired. Furthermore, the court did not know, at the time it took the instant case "out of assignment," whether there would even be a trial, as appellant's competence to stand trial, after being called into question by his own counsel, had not been evaluated by the Department and then ruled upon by the court.

As for appellant's claim that the court, having found appellant competent to stand trial at the February 6th hearing, should have scheduled his trial to commence on or before March 13th, the 180-day deadline, the court was under no legal obligation to do so, as, for the reasons just discussed, it had "good cause" to schedule the trial beyond the March 13th deadline of the 180-day rule. Nonetheless we feel impelled to note that the court wisely left the selection of the trial date up to the assignment office, as, at that time, the court had no information as to the availability of appellant's newly appointed counsel or the time she would need to prepare for trial. And, indeed, when a trial date of April 3-6 was selected, appellant's newly appointed counsel requested a postponement because she was not available on the date selected and needed more time to prepare for trial. Interestingly enough, that request was supported by appellant.

We are, moreover, unpersuaded by appellant's contention that the circuit court erred by deeming the 180-day time period "tolled" by the competency evaluation, as there is a footnote in *Thompson*, stating that there is no Maryland law that permits a competency evaluation to "toll" the *Hicks* deadline. 229 Md. App. at 398. Although the specific word used by the circuit court, as well as by his own counsel, may not have been the appropriate term, the use of that misnomer was, as the State put it, "immaterial," because the "judge made a good cause finding that justified the delay." And we agree.

For the foregoing reasons, we hold that because appellant has not met his burden of demonstrating a clear abuse of discretion by the trial court or a lack of good cause in delaying his trial beyond the original 180-day deadline, the trial court did not err in denying appellant's motion to dismiss.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.