

Circuit Court for Washington County
Case No. 21-K-17-053506

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2606

September Term, 2018

XAVIER DEON CURRIE

v.

STATE OF MARYLAND

Fader, C.J.,
Shaw Geter,
Thieme, Raymond G.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: February 6, 2020

*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.

Xavier Deon Currie, appellant, was convicted by a jury, in the Circuit Court for Washington County, of three counts of first-degree burglary as well as related charges that included wearing, carrying, and transporting a handgun in a vehicle on a public road and unlawful possession of a regulated firearm. Upon receiving an aggregate sentence of 65 years' imprisonment, Currie noted this appeal, raising a single issue: whether the circuit court erred in canceling his suppression hearing and then summarily denying his motion to suppress evidence. Finding no error, we affirm.

BACKGROUND

Currie does not contend, on appeal, that the evidence was insufficient to sustain his convictions, nor does he raise any challenge to the conduct of the trial. We therefore forego a detailed factual recitation of the underlying crimes and set forth only the procedural facts pertinent to the issue raised. *Teixeira v. State*, 213 Md. App. 664, 666-67 (2013) (citations omitted).

On March 27, 2017, a fourteen-count indictment was issued, charging Currie with three separate burglaries of dwellings in Washington County and related offenses. Then, on April 18, 2017, the Office of the Public Defender entered its appearance and filed a line, pursuant to an Administrative Order titled, "Initial Filings by Office of the Public Defender," that requested, among other things, entry of a motion to suppress evidence, under Maryland Rule 4-252. A suppression hearing was scheduled on December 11, 2017, and trial was scheduled to begin one week later.

Plea negotiations ensued, and, on November 28, 2017, Currie, acting through his assigned public defender, filed a “NOTICE TO WITHDRAW MOTION TO SUPPRESS,” which stated:

The Defendant, Xavier Dion Currie, by and through Counsel, [redacted], Assistant Public Defender, withdraws his Motion to Suppress currently scheduled for December 11, 2017. The case will now be a plea on December 18, 2017.

But when the parties appeared in court on the date of the scheduled plea hearing, Currie had had a change of heart and no longer wished to enter a guilty plea. After the State called the case, the following colloquy occurred in open court:

[THE STATE]: Your Honor, it was the State’s understanding that we were here today for a -- to enter a plea on the record. The State had offered a plea deal wherein Mr. Currie would be pleading guilty to three counts of third degree burglary. Upon acceptance of that plea and a finding of guilt, the State would have nol prossed the balance of the charges and would have been recommending a sentence of eight years, consecutive to any and all outstanding unserved sentences. It is my understanding that Mr. Currie may have now had a change of heart. I will defer to Mr. [Defense Counsel].

[DEFENSE COUNSEL]: Your Honor, it’s my understanding that he does wish to have a trial. **I’ll ask that they be continued for a motions and trial.**

He does understand that that offer from the State is going to be withdrawn and understands that the maximums he is exposed [sic] could be imposed. Is that correct, Mr. Currie?

DEFENDANT: Uh, yeah, I understand.

THE COURT: All right.

[THE STATE]: All right. And Your Honor, because this was in a plea posture, the State has no Witnesses here today; no ability to go forward on a trial here today.

THE COURT: Understood.

[THE STATE]: **We would ask that this be set in for a motions hearing and a trial date;** that good cause be found for any continuance; and that any continuance be charged to the defense.

THE COURT: All right. I will continue the case, finding good cause to do so. Mr. Currie is certainly entitled to have these matters tried.

I'm going to set the matter in for a motions hearing on January 16th, 2018.

[THE STATE]: Your Honor.

THE COURT: Yes.

[THE STATE]: **I believe January 16th is a trial date for me. I have other matters that are set for trial on that day.**

THE COURT: Oh, I think you're right. All right.

Mr. [Prosecutor], I have several dates here for you. I'm guessing all of them are trial dates or --

[THE STATE]: Most likely. **Honestly I actually think Mr. Currie may have withdrawn his motions hearing -- motions when we had the plea. So I actually believe it would be up to the Court's discretion as to whether or not to grant him a motions hearing.**

THE COURT: All right. Mr. [Defense Counsel]?

[DEFENSE COUNSEL]: Your Honor, I'm new to the case. It was set for a plea today. **I'd, I'd imagine that there are issues that are constitutional in nature. I'll raise them.**

THE COURT: All right.

[DEFENSE COUNSEL]: So if the Court wants to set a trial date, I can contact the Clerk and the State if there are issues.

THE COURT: All right. **I’ll set the trial date on March 20th, 2018. We can deal with the motions as needed.** Good cause is found.

(Emphasis added.)

Four weeks later, on January 25, 2018, Currie, acting through his assigned public defender, filed a “LINE,” which stated:

The Defendant, **Xavier Dion Currie**, by and through his attorney, [redacted], Assistant Public Defender for Washington County, hereby informs the State that the following are issues for the suppression hearing:

1. Defendant objects to all physical evidence and statements the State has made from the illegal stop, detention, arrest, and all illegally obtained statements on the 4th, 5th, 6th Amendment, State, and Federal grounds and due process grounds and the search warrant.

On March 20, 2018, the scheduled trial date, defense counsel appeared, without Currie, and requested a continuance, which was granted, and trial was rescheduled for May 1, 2018. Then, at 11:46 a.m. on April 19, 2018, the State filed a “RESPONSE TO DEFENDANT’S REQUEST FOR A MOTIONS HEARING,” requesting that Currie’s motion to suppress be denied without a hearing:

The State of Maryland, by and through [redacted], Assistant State’s Attorney for Washington County, Maryland, respectfully responds to the defendant’s request to set a motions hearing in this case, and in opposition thereof; respectfully states as follows:

1. The defendant filed a line on January 25, 2018, indicating issues for a suppression hearing in the above captioned case.

2. The defendant, through current counsel, withdrew his Motion to Suppress that was scheduled for December 11, 2017 on November 28, 2017.

3. Md. Rule 4-252 states that a motion to suppress an unlawful search, seizure, interception of wire or oral communication, or pretrial identification must be raised within 30 days after the earlier of the appearance of counsel, or the first appearance of the defendant.

4. The appearance of the Office of the Public Defender was entered in this case on April 18, 2017.

4.(sic) Even if the line filed on January 25, 2018 could be considered a motion to suppress, it was not filed in accordance with Md. Rule 4-252 and per Md. Rule 4-252, any Motion to suppress not raised in conformity with Rule 4-252 is waived unless good cause is shown. Defense Counsel has made no proffer or showing of good cause.

5. The State was just informed by the Assignment Office that July 17, 2018 has been set as a Motions Date in this case.

Wherefore, the [S]tate respectfully asks that the Defense's motion to suppress be denied without the necessity of a hearing, and that the July 17, 2018 Motions Date be cancelled.

Less than an hour later, at 12:43:45 p.m. the same day, the circuit court issued an order stating as follows:

The Line indicating issues for a suppression, having been read and considered, along with the State's response thereto, it is this _____ 19th of April, 2018,

ORDERED by the Circuit Court for Washington County, Maryland that the Motion to Suppress be, and hereby is, denied, and the hearing currently set for July 17, 2018, be, and hereby is, canceled.

The following day, Currie filed a motion for reconsideration, which stated:

1. Defendant is set for a two or three day trial on August 30, 2018 and August 31, 2018.

2. The Office of the Public Defender entered on 4-18-2017 with 4-252 Motions via administrative Order.
3. Defendant did ask for a plea to be set and did waive motions pursuant to that goal.
4. That on 12-18-2017 the Defendant rejected the plea.
5. That on 1-25-2018 the defendant renews his request for a motions date seeing the clerk's office did not set.
6. That the State never objected until 4-19-2018.
7. Said objection is not timely and must be dismissed[.]
8. In the alternative, even if timely, the Defendant has rights under the US [Constitution], Maryland [Constitution] and Declaration of rights and common law[.]

WHEREFORE, the Defendant respectfully requests that this Honorable Court schedule[] a hearing.

Several weeks later, the circuit court denied that motion as well.

The matter proceeded to a two-day jury trial, and Currie was found guilty of all fourteen charges in the indictment, including three separate counts of first-degree burglary; knowingly wearing, carrying, and transporting a handgun in a vehicle on a public road; and possession of a regulated firearm after having been previously convicted of a felony. The court thereafter sentenced Currie to three consecutive 20-year terms of imprisonment, one for each first-degree burglary, and a consecutive five years for illegal possession of a regulated firearm; and it merged the remaining counts or, where merger was not required, ran all other sentences concurrently with one of the burglary sentences, resulting in a total active term of incarceration of 65 years. Currie then noted this appeal.

DISCUSSION

Standard of Review

“In addressing the circuit court’s compliance with [the Maryland Rules], we apply a *de novo* standard of review.” *State v. Graves*, 447 Md. 230, 240 (2016) (citations omitted). “We also adhere to the familiar principles of statutory interpretation.” *Id.* (citation omitted). We “begin with the normal, plain reading” of the rule. *State v. Bey*, 452 Md. 255, 265 (2017) (citation and quotation omitted). If that language “is unambiguous and clearly consistent with the [rule’s] apparent purpose, our inquiry” ordinarily ends and we apply the rule “as written without resort to other rules of construction.” *Id.* (citation and quotation omitted).

Analysis

Currie contends that the circuit court “either erred or abused its discretion” in granting the State’s motion and summarily denying his motion to suppress without a hearing “simply because” he “had, in anticipation of pleading guilty, briefly withdrawn his timely-filed motions.” According to Currie, the State’s “Response” to his line, requesting that the motion to suppress be denied without a hearing, was, in substance, a motion for sanctions, and, therefore, the circuit court erred in granting it without providing him an opportunity to respond. If, on the other hand, it was a response, then it was late, under Rule 4-252(f), and the court erred in considering it. And, in any event, Currie insists that the court abused its discretion in imposing “the most severe possible” sanction for his “alleged non-compliance” with Rule 4-252.

Maryland Rule 4-252 governs pretrial motions in criminal cases in the circuit courts.

In relevant part, that rule provides:

(a) Mandatory Motions. In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:

(1) A defect in the institution of the prosecution;

(2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;

(3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;

(4) An unlawfully obtained admission, statement, or confession; and

(5) A request for joint or separate trial of defendants or offenses.

(b) Time for Filing Mandatory Motions. A motion under section (a) of this Rule shall 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 4-213(c), except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.

* * *

(f) Response. A response, if made, shall be filed within 15 days after service of the motion and contain or be accompanied by a statement of points and citation of authorities.

* * *

Under the plain language of the rule, a suppression motion is included among the mandatory motions and must, with an exception not at issue here, “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 4-213(c)[.]” Md. Rule 4-252(b). In the instant case, the earlier of those two dates was April 18, 2017, when Currie’s counsel entered his appearance. Accordingly, to ensure compliance with the rule, the suppression motion was required to be filed no later than May 18, 2017.

Currie did file a suppression motion within the time mandated by the rule. That motion, however, is not the subject of this appeal. That is because Currie withdrew that motion, in anticipation of entering a guilty plea that he ultimately declined to enter. Thus, the only conceivable motion at issue in this appeal is the “Line,” which he filed January 25, 2018, well beyond the time limit mandated by Rule 4-252(b).

Even if we give Currie the benefit of the doubt and assume that the “Line” was sufficient to constitute a motion under Rule 4-252 (a point the State does not concede but we need not address), such a tardy motion, “not raised in conformity with the rule,” is deemed “waived ‘unless the court, for good cause shown, orders otherwise.’” *Pugh v. State*, 103 Md. App. 624, 655 (quoting Md. Rule 4-252(a)), *cert. denied*, 339 Md. 354 (1995), *cert. denied*, 339 Md. 355 (1995). *Accord Davis v. State*, 100 Md. App. 369, 385 (1994) (observing that the “[f]ailure to make a mandatory motion within the prescribed time limits, absent good cause to forgive the dereliction, bars all claims, even those full of constitutional merit”) (citations omitted).

The defendant “has the burden to show good cause.” *Pugh*, 103 Md. App. at 655 (citations omitted). A “statutory [and thus, a rule-based¹] requirement of ‘good cause’ vests the trial court with wide discretion.” *Grandison v. State*, 305 Md. 685, 711, *cert. denied*, 479 U.S. 873, *reh’g denied*, 479 U.S. 1001 (1986). Accordingly, we review the trial court’s decision summarily to deny Currie’s non-conforming suppression motion for an abuse of discretion.

A court abuses its discretion when its ruling is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Nash v. State*, 439 Md. 53, 67 (2014) (citation and quotation omitted). Thus, under an abuse-of-discretion standard, an appellate court will not reverse the trial court’s ruling “simply because [it] would not have made the same ruling.” *Id.* (citation and quotation omitted); *accord Pugh*, 103 Md. App. at 657 (observing that “we cannot substitute our judgment for that of the trial court, even if we might have reached a different result”).

First, to the extent that the State’s “Response” should be deemed a motion for sanctions and that the circuit court thus erred in granting that motion without permitting Currie an opportunity to respond, any error was cured because Currie was able to present any arguments in opposition in his motion for reconsideration, which the court, apparently, did consider, since it denied that motion several weeks after it was filed.

¹ In interpreting the Maryland Rules, we “adhere to the familiar principles of statutory interpretation.” *Graves*, 447 Md. at 240 (citation omitted).

Second, to the extent that we may regard Currie’s belated “Line” as a motion under Rule 4-252, a debatable proposition at best, that “motion” was filed beyond the 30-day time limit mandated by Rule 4-252(b), and the State’s response to that “motion” was, in turn, late under Rule 4-252(f). The problem, which, in our view, Currie has failed to overcome, is that it was his burden to show good cause for the circuit court to excuse the untimeliness of his “motion,” and his pleadings failed to do so. In his motion for reconsideration, Currie merely pointed out the untimeliness of the State’s response and his “rights under the US [Constitution], Maryland [Constitution] and Declaration of rights and common law[.]” But the “[f]ailure to make a mandatory motion within the prescribed time limits, absent good cause to forgive the dereliction, bars all claims, even those full of constitutional merit.” *Davis*, 100 Md. App. at 385. The mere assertion that constitutional rights may have been violated does not, in itself, constitute good cause; indeed, virtually every motion to suppress asserts a similar claim. Because Currie failed to establish good cause for the circuit court to excuse the untimeliness of his “Line,” we cannot say that the circuit court abused its discretion in denying his motion to suppress.

As for Currie’s assertion that he was unwittingly placed into this position because he had an eleventh-hour change of heart and decided, on the morning of the scheduled plea hearing, to go to trial instead, we observe that nothing in the rules required him to withdraw his motion to suppress ahead of time. In hindsight, it is clear that the wiser policy for a defendant in his position is simply to leave his suppression motion active, and, in the event

he enters a guilty plea, he may simply withdraw his motion at that time, thereby guarding against the outcome Currie suffered in this instance.

**JUDGMENTS OF THE CIRCUIT COURT
FOR WASHINGTON COUNTY
AFFIRMED. COSTS ASSESSED TO
APPELLANT.**