UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0551

September Term, 2014

TIMOTHY KEVIN LOCKLEAR

v.

STATE OF MARYLAND

Meredith,
Berger,
Davis, Arrie, W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: June 3, 2015

Appellant, Timothy Kevin Locklear,[1] was tried and convicted by a jury in the Circuit Court for Baltimore County (Souder, J.) of first-degree burglary, third-degree burglary, and second-degree assault.[2] The trial court sentenced appellant to a prison term of 10 years on the charge of second-degree assault and to a concurrent term of 20 years on the charge of first-degree burglary, merging the third-degree burglary conviction therein for sentencing purposes. From the conviction and sentence, appellant filed a timely notice of appeal.

Appellant presents the following question for our consideration:

> Did the trial court err in denying Appellant's motion to dismiss for violation of *Hicks*?

For the reasons that follow, we shall affirm the judgments of the trial court.

BACKGROUND

Because the facts of the underlying crime are not germane to our determination of the issue appellant presents for our review, we do not recite them in detail, other than to note that the charges arose from appellant's alleged breaking and entering into the house of 86-year-old Charles Weitzel on February 20, 2013, threatening the elderly man with a gun, and then throwing him onto the ground with a demand to "give me all your money." Appellant

[1] Appellant's notice of appeal and the briefs submitted by the parties to this Court reflect appellant's name as Timothy Kevin Locklear. The circuit court documents, however, reveal that his name is Timothy Keith Locklear, a/k/a Timothy Kevin. For the sake of congruity with documents filed in this Court, we will refer to appellant as Timothy Kevin Locklear.

[2] The jury acquitted appellant of first-degree assault, use of a firearm in the commission of a crime of violence, and illegal possession of a regulated firearm.

allegedly ransacked Mr. Weitzel's bedroom and stole his wallet. Mr. Weitzel fought back, injuring his assailant, who was identified as appellant through DNA from the blood he left at Mr. Weitzel's house.

Defense counsel entered his appearance on behalf of appellant on July 18, 2013 and trial was initially scheduled for October 22, 2013. The trial court noted in its docket that the "Hicks Rule Tickle" date before which trial was required to commence was January 14, 2014, 180 days after defense counsel's entry of appearance.[3]

When the parties appeared in court on October 22, 2013, defense counsel requested a postponement, on the ground that he had recently received, from the State, DNA evidence, which required review by an expert. Counsel also expressed "other investigative needs." Although the prosecutor complained that the victim and witnesses were then present and ready for trial, the administrative judge found good cause for the postponement "to get the DNA analysis done," and she reset trial for January 7, 2014.

On the morning of January 7, 2014, the administrative judge advised the parties that he was unsure whether a court would be available to try the case that day. Asking counsel to "hang tight for a few minutes," the judge returned two hours later to inform the parties that

[3] *See Hicks v. State*, 285 Md. 310 (1979). *Hicks* analyzed the requirement that criminal cases be brought to trial within 180 days after the earlier of the appearance of counsel or the first appearance by the defendant in circuit court and held that dismissal of the charges pending against a defendant was the sanction for a failure to bring the matter to trial within the 180 day time frame. The 180th day is often referred to as the "*Hicks* date."

no court was available to try the case and inquired whether there was any possibility of resolving the matter pursuant to a plea agreement. Defense counsel and the prosecutor agreed that a plea appeared unlikely.

The administrative judge found good cause for the postponement, marking it on the docket as a "Court's postponement since it is the fault of neither of the parties." The prosecutor, indicating that she and defense counsel had likely anticipated the possibility of a postponement, informed the judge that, "Mr. [Defense Counsel] and I have discussed February 25th if that's within the pailable [sic]. And if we get started first thing on the twenty-fifth, I can imagine this would only take two days."

Trial was rescheduled for February 25, 2014. Defense counsel made no objection to the postponement of trial until that date, 42 days after the expiration of the *Hicks* date.

On February 25, 2014, substitute defense counsel requested a postponement on the ground that appellant's public defender was ill. The prosecutor then pointed out that the record did not reflect that appellant had waived *Hicks*, which had expired on January 14, 2014. Appellant declined to waive *Hicks*, but the administrative judge nonetheless found good cause to grant the postponement The parties agreed to a new trial date of May 21, 2014, and trial began on that date.

Prior to jury selection, defense counsel, referring to appellant's *pro se* motion to dismiss claiming a *Hicks* violation, advised the court that notwithstanding the fact that two

of the postponements had been at the request of the defense, appellant "feels as though that was not his fault and is asking this case to be dismissed based on . . .Hicks violations." The trial court considered the postponements and the reasons therefor, and the prosecutor pointed out that the administrative judge had found good cause for each postponement. Although appellant believed that his *Hicks* rights were "violated," the court ruled:

> All right. Well I don't know if they were violated, but he was aware of the date when he postponed the case passed [sic] that date. I'm sure if Mr. Locklear's had a chance to look at the law, he knows that it—when there is good cause and that trial is not being delayed just for the sake of delay, there is no problem. So the Motion to Dismiss the case, based on those arguments, is denied.

DISCUSSION

Appellant contends that the lower court abused its discretion when it granted a postponement that pushed his trial past the *Hicks* date and thereafter declined to dismiss the charges against him on that ground. The administrative judge erred, he says, in failing to explain, on January 7, 2014, why the postponement required a violation of *Hicks* when five business days remained before the January 14, 2014 expiration of the *Hicks* date. In the absence of an explanation of a reason to postpone the trial past January 14, 2014, appellant concludes, the administrative judge had no reasonable basis upon which to find good cause for the postponement and abused his discretion when he postponed the trial so far past the *Hicks* date.

The scheduling of a trial date in a criminal matter is governed by Md. Code (2008 Repl. Vol., 2013 Supp.), §6-103 of the Criminal Procedure Article ("CP"), which states, in pertinent part:

> (a) *Requirements for setting date*.–(1) The date for trial of a criminal matter in the circuit court shall be set within 30 days after the earlier of:
>
> (i) the appearance of counsel; or
>
> (ii) the first appearance of the defendant before the circuit court, as provided in the Maryland Rules.
>
> (2) The trial date may not be later than 180 days after the earlier of those events.
>
> (b) *Change of date*.—(1) For good cause shown, the county administrative judge or a designee of the judge may grant a change of the trial date in a circuit court:
>
> (i) on motion of a party; or
>
> (ii) on the initiative of the circuit court.

To be read in tandem with CP §6-103 is Md. Rule 4-271, which states, in pertinent part:

> (a) **Trial date in circuit court**. (1) The date for trial 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 pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events. . .On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date. If a circuit court trial date is changed, any subsequent changes of the trial date may be made only by the county administrative judge or that judge's designee for good cause shown.

CP §6-103(a) and Md. Rule 4-271(a) require that "a criminal case be brought to trial within 180 days of the appearance of counsel or the appearance of the defendant before the circuit court, whichever occurs first." *Choate v. State*, 214 Md. App. 118, 139, *cert. denied*,

436 Md. 328 (2013). Pursuant to the statute and the Rule, a county administrative judge or that judge's designee may grant a postponement beyond the 180–day deadline "for good cause shown."

The 180 day rule is "mandatory and dismissal of the criminal charges is the appropriate sanction for violation of that time period" if good cause has not been established.[4] *Ross v. State*, 117 Md. App. 357, 364 (1997). "[T]he critical postponement for purposes of Rule 4–271 is the one that carries the case beyond the 180 day deadline." *State v. Brown,* 355 Md. 89, 108–9 (1999).

On review of an administrative judge's decision to postpone for good cause, "the trial judge (as well as an appellate court) shall not find an absence of good cause unless 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. Frazier,* 298 Md. 422, 454 (1984). "If it is the administrative judge who extends the trial date and the order is supported by necessary cause, the postponement is valid and both the requirements and purposes of the statute and rule have

[4]The Court of Appeals has explained, however, that while the rule was adopted to facilitate the prompt disposition of criminal cases, the *Hicks* rule serves "as a means of protecting society's interest in the effective administration of justice. The actual or apparent benefits [CP §6-103] and Rule 4-271 confer upon criminal defendants are purely incidental." *State v. Price*, 385 Md. 261, 278 (2005). Unlike the Sixth Amendment speedy trial guarantee, "the *Hicks* rule is a statement of public policy, not a source of individual rights." *Choate*, 214 Md. App. at 140.

been fulfilled." *Fields v. State*, 172 Md. App. 496, 521 (2007). Appellant has not met his burden of demonstrating a lack of good cause or an abuse of discretion here.

There appears to be no dispute that the *Hicks* date in this matter was January 14, 2014. On January 7, 2014, the trial was postponed until February 25, 2014, making it the critical postponement for the purposes of *Hicks*.

The administrative judge granted the postponement on that date due to the lack of an available court to try the case. The administrative judge found good cause to postpone the matter, a finding with which we cannot disagree. *See Brown v. State*, 124 Md. App. 245, 251 (1998), *rev'd*, 355 Md. 89 (1999) ("On the date of the critical postponement, the administrative judge postponed the case due to the unavailability of a judge. We cannot say that the reason for the postponement failed, as a matter of law, to constitute good cause for the postponement."); *Reed v. State*, 78 Md. App. 522, 534 (1989) ("Non-chronic court congestion can constitute good cause for postponing a trial beyond the 180-day period.").

Appellant concedes that the unavailability of a court to try the case may constitute good cause for a postponement past the *Hicks* date. Quoting *Rosenbach v. State*, 314 Md. 473, 479 (1989), however, he points out that even a case postponed for good cause "may yet run afoul of the statute and the rule if, after a valid postponement, there is inordinate delay in bringing the case to trial."

Appellant asserts that on January 7, 2014, the administrative judge should have attempted to schedule the trial within the five business days remaining before the expiration of the *Hicks* date or at least "substantially earlier than February 25, 2014," 42 days after the expiration of the *Hicks* date. In his view, the judge's failure to do so without explanation mandated dismissal of his case.

The burden of showing that the post-postponement delay is inordinate, in view of all the circumstances, is on the defendant. *Rosenbach*, 314 Md. at 479. Appellant has not met that burden here. Indeed, he has not even attempted to do so, instead merely baldly stating that the forty-two day delay was inordinate and attempting to shift his burden to the State by arguing that "the State has never shown why Appellant was not assigned a second trial date substantially earlier than February 25, 2014."[5] Moreover, and crucially, defense counsel did not object to the postponement that pushed appellant's trial past the expiration of the *Hicks* date, and, at the January 7, 2014 postponement hearing, he even discussed a mutually agreeable new trial date with the prosecutor. Therefore, the defense essentially consented to the postponement. As the Court of Appeals stated in *Hicks*, 285 Md. at 310:

[5]In any event, it is the administrative judge "who has an overall view of the court's business," and when the judge postpones a case, he or she "is generally aware of the state of the docket in the future, the number of cases set for trial, and the normal time it will likely take before the case can be tried." *Frazier*, 298 Md. at 453-54. As such, in the absence of anything in the record to suggest otherwise, we presume that the administrative judge, armed with this knowledge, assigned the new trial date as expeditiously as possible.

> [One] circumstance where it is inappropriate to dismiss the criminal charges is where the defendant, either individually or by his attorney, seeks or expressly consents to a trial date in violation of Rule [4-271(a)(1)]. It would, in our judgment, be entirely inappropriate for the defendant to gain advantage from a violation of the rule when he was a party to that violation.

Under the circumstances presented in this matter, the administrative judge did not abuse his discretion in finding good cause to postpone the trial forty-two days past the *Hicks* date. Thus, there was no basis upon which to impose the "severe sanction" of dismissal of the charges, and the trial court properly denied appellant's motion to dismiss on that ground.

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