

Circuit Court for Talbot County  
Case No. C-20-CR-20-000158

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 358

September Term, 2022

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CHARLES ADLER, III

v.

STATE OF MARYLAND

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Graeff,  
Beachley,  
McDonald, Robert N.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Beachley, J.

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Filed: March 8, 2023

\*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.

\*\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case concerns whether the Circuit Court for Talbot County erred by setting a defendant’s initial trial date beyond the *Hicks* deadline. The *Hicks* rule derives from three sources: Maryland Code (2001, 2018 Repl. Vol.), § 6-103 of the Criminal Procedure Article (“CP”); Maryland Rule 4-271(a); and *State v. Hicks*, 285 Md. 310 (1979). CP § 6-103 provides:

- (a)(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)(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.
- (2) If a circuit court trial date is changed under paragraph (1) of this subsection, any subsequent changes of the trial date may only be made by the county administrative judge or that judge’s designee for good cause shown.
- (c) The Court of Appeals may adopt additional rules to carry out this section.

Rule 4-271 mirrors CP § 6-103, providing in relevant 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. When a

case has been transferred from the District Court because of a demand for jury trial, and an appearance of counsel entered in the District Court was automatically entered in the circuit court pursuant to Rule 4-214(a), the date of the appearance of counsel for purposes of this Rule is the date the case was docketed in the circuit court. 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.

Together, CP § 6-103 and Rule 4-271 are termed the "*Hicks* rule," named after *State v. Hicks*, 285 Md. 310 (1979), which held that noncompliance with the 180-day deadline without a good cause finding requires dismissal of the criminal charges.<sup>1</sup> With these principles in mind, we turn to the facts of this case.

Appellant, Charles Adler, III, was charged with assault, harassment, driving while impaired by alcohol, and other related charges. Adler's counsel entered his appearance on September 15, 2020. The parties agreed at a hearing in the circuit court that, accounting for the tolling of the *Hicks* period at various points during the Covid-19 pandemic, the *Hicks* deadline was October 13, 2021.<sup>2</sup> On October 1, 2021, the county administrative

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<sup>1</sup> When *Hicks* was decided, the deadline was 120 days. "It was changed to 180 days in 1979." *Goins v. State*, 293 Md. 97, 100 n.3 (1982).

<sup>2</sup> In his opening brief, Adler argued that the *Hicks* deadline was September 10, 2021, prior to the court's good cause finding. However, he conceded this issue in his reply brief and substantially agrees with the State's calculation of the *Hicks* date. The parties now calculate the *Hicks* deadline to have been either October 11 or 12, 2021. It is not necessary for the purposes of this appeal to determine the precise *Hicks* deadline, as both parties agree that the good cause finding was made before the deadline and the initial trial date was scheduled after the deadline.

judge found good cause to set Adler's *initial* trial date past the *Hicks* deadline. Adler objected to that determination, and later filed a motion to dismiss the charges against him based on what he perceived to be a violation of the *Hicks* rule. In December 2021, the court set Adler's initial trial date for March 14, 2022. After a hearing on January 14, 2022, the court denied Adler's motion to dismiss.

On April 26, 2022, Adler entered a conditional guilty plea to driving while impaired by alcohol. The conditional plea allowed him to appeal the denial of his motion to dismiss. Adler thereafter filed this timely appeal.

Adler's appellate argument presents a question of law: Does the *Hicks* rule require the court to set a trial date that complies with *Hicks* before the administrative judge may find good cause to postpone the trial until after the *Hicks* date? Adler argues that setting an initial trial date beyond the *Hicks* period is impermissible under CP § 6-103 and Rule 4-271, and requires dismissal of the charges against him. He contends that the *Hicks* rule requires a judge to first set an initial trial date within the *Hicks* period, which the administrative judge may then postpone for good cause. He posits that the plain language of the statute and rule, as well as our decision in *Franklin v. State*, 114 Md. App. 530 (1997), supports his view that good cause findings apply only to postponements of trial dates that are set in conformance with *Hicks*.

Although Adler does not challenge the good cause finding itself, we note that this case and all other cases pending in the State at that time experienced numerous delays due to the Covid-19 pandemic, an event that our highest court has described as "the worst public

health crisis in a century.” *Murphy v. Liberty Mut. Ins. Co.*, 478 Md. 333, 350 (2022). Numerous administrative orders issued by the Court of Appeals (now called Supreme Court of Maryland) limited the operations of the judiciary in 2020 and 2021. *See id.* at 356-61 (describing the Court's issuance of emergency orders).

The courts were closed to the public for several months in 2020, and jury trials were suspended on multiple occasions. When the *Hicks* issue was raised for the first time at the October 1, 2021 hearing, the 180-day deadline was less than two weeks away. At the January 14, 2022 hearing on Adler’s motion to dismiss, both parties recognized the substantial impact that the pandemic had on the judiciary’s operations. There is no suggestion in this record that it was feasible to try Adler’s case before the October 13, 2021 *Hicks* deadline given Covid-19’s unprecedented impact on court operations. Indeed, as part of the discussion concerning good cause, the administrative judge remarked that “we’re booking well into next year for a jury trial.”

Against this backdrop, Adler’s argument elevates form over substance. We acknowledge that the court could have set a trial date between October 2 and October 12, 2021, in order to comply with *Hicks*, despite knowing that the case could not possibly be tried within that window, and then on its own motion found good cause to postpone that fictitious trial date to a date after the *Hicks* deadline. But requiring a court to set a fictitious trial date, merely to change the date immediately thereafter to the earliest available date, does nothing to further the purpose of the *Hicks* rule, which is “to obtain prompt disposition of criminal charges.” *Tunnell v. State*, 466 Md. 565, 585 (2020) (quoting *Hicks*, 285 Md.

at 316). The law will not require a useless act. *Cf. B-Line Med., LLC v. Interactive Digit. Sols., Inc.*, 209 Md. App. 22, 59 (2012) (“[W]hen the objection is clearly made before instructions are given, and restating the objection after the instructions would obviously be a futile or useless act, we will excuse the absence of literal compliance with the requirements of the Rule.” (quoting *Haney v. Gregory*, 177 Md. App. 504, 518 (2007))); *Shoreham Devs., Inc. v. Randolph Hills, Inc.*, 248 Md. 267, 277 (1967) (“Certainly, after the repudiation of the contract by the appellee, the appellants, in order to place the appellee in default, were not required to serve notice on the appellee of some future definite settlement date and go through a hollow ritual of tender. Neither law nor equity requires a person to perform a useless act.”); *Ohio v. Roberts*, 448 U.S. 56, 74 (1980) (“The law does not require the doing of a futile act.”), *abrogated on other grounds by Crawford v. Washington*, 541 U.S. 36 (2004). Here, it would have been pointless for the administrative judge to set a trial date within *Hicks* that everyone knew was fictitious before proceeding to postpone the trial for good cause.

Adler’s reliance on *Franklin v. State*, 114 Md. App. 530 (1997), is similarly misplaced. In *Franklin*, this Court held that the criminal charges had to be dismissed because the circuit court’s case assignment office had set an initial trial date after the *Hicks* deadline without there having been any good cause finding by the administrative judge. *Id.* at 536. The key aspect of *Franklin* that violated *Hicks* was the absence of a good cause finding by the administrative judge. Here, the administrative judge made the requisite good cause finding.

In these unique circumstances involving the worst public health emergency in a century, we hold that the court did not err in finding good cause to set Adler's initial trial date after the *Hicks* deadline.

**JUDGMENT OF THE CIRCUIT COURT  
FOR TALBOT COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**