

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1028

September Term, 2017

STEVEN HOGAN

v.

STATE OF MARYLAND

Berger,
Friedman,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 27, 2018

This appeal arises from a criminal proceeding before the Circuit Court for Carroll County. Steven Hogan (“Hogan”), appellant, was charged with possession of a firearm by a disqualified person, two counts of illegal possession of a handgun, illegal possession of ammunition, and resisting arrest. On motion by the State, the circuit court found that Hogan was incompetent to stand trial. Hogan raises the following question on appeal:

Whether the circuit court erred in ruling that Hogan was incompetent to stand trial.

Shortly before oral argument, the State filed a motion to dismiss appeal for mootness or, in the alternative, moved to consolidate and postpone oral argument. We permitted the appellant the opportunity to address the State’s motion to dismiss at oral argument.

For the reasons stated herein, we grant the State’s motion to dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Hogan’s Indictment and Competency Evaluation

On August 4, 2016, Hogan was charged with possession of a firearm by a disqualified person, two counts of illegal possession of a handgun, illegal possession of ammunition, and resisting arrest. On motion by the State, the circuit court ordered Hogan to undergo a competency evaluation.

Hogan was evaluated by Dr. Tyler Hightower (“Hightower”), the Director of Forensic Services at Springfield Hospital Center. In a report dated February 9, 2017, Hightower concluded that Hogan was incompetent to stand trial. Hogan was subsequently transferred to Springfield Hospital Center. In a supplemental report dated May 9, 2017, Hightower wrote that Hogan’s mental state had not changed since her initial evaluation.

According to Hightower's supplemental report, Hogan was "influenced by paranoid and persecutory beliefs." In particular, Hogan believed that the State's Attorney's Office was engaged in a conspiracy against him. Hightower described Hogan's thinking as "illogical and perseverative when he answers questions about how he might make decisions about approaching the criminal charges." Hightower concluded that Hogan did not possess a rational understanding of the charges against him and was unable to assist in his defense.

Competency Hearing

The competency hearing was held on May 11, 2017. Hightower's reports were entered as evidence, and the court called Hightower to the stand. Hightower testified that Hogan had "some factual understanding" and could "recite that he does have charges." Nevertheless, Hightower concluded that Hogan had "delusional thoughts" and that "rationally, he is going to have difficulties assisting his attorney in providing a coherent and logical story of what happened." According to Hightower, Hogan was "insisting upon one plea and his reasons for insisting upon one plea is [sic] for delusional reasons."

After Hightower's testimony, the circuit court called Hogan to the stand. On direct examination, Hogan testified that he understood that he was in the courtroom to prove that he was competent to stand trial. He testified that he further understood the charges and that he believed that he is not guilty.

At the conclusion of the hearing, the trial judge found that Hogan was incompetent to stand trial:

I find Dr. Hightower's testimony and her reports to be persuasive in this case. I find that her testimony to be [sic] credible and factually based. I find that there is a factual basis

for Dr. Hightower’s opinions and that her opinions which are held to a reasonable degree psychiatric [sic] certainty are entitled to much greater weight than Mr. Hogan’s testimony in this case.

And, so, for those reasons, the Court does determine and will find that the Defendant, Steven Hogan, is not competent to stand trial at this point in time in that based on the evidence presented Mr. Hogan is unable to understand the nature of the object of the proceeding or to assist in his defense.

The court also denied Hogan’s motion for an alternative competency evaluation, finding “no good cause to do that.” Hogan timely filed an interlocutory appeal from the trial court’s finding that he was incompetent to stand trial.

After the briefs were filed in this case, Hogan was found competent to stand trial on December 5, 2017. Thereafter, a trial was held on December 6-7, 2017, and Hogan was convicted of counts 1, 3 and 5 of the indictment. He was sentenced on February 20, 2018. On March 19, 2018, Hogan noted an appeal from the final conviction.

DISCUSSION

Because the circuit court determined that Hogan was competent and he was convicted, we hold that Hogan’s interlocutory appeal from an initial finding that he was incompetent is moot. “A case is moot when there is ‘no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant.’” *State v. Dixon*, 230 Md. App. 273, 277 (2016) (quoting *Suter v. Stuckey*, 402 Md. 211, 219-20 (2007)). Appellate courts “do not sit to give opinions on abstract propositions or moot questions, and appeals which present nothing else for decision are dismissed as a matter of course.” *La Valle v. La Valle*, 432 Md. 343, 351-52

(2013) (citing *State v. Ficker*, 266 Md. 500, 506-07 (1972)); *see also Dixon, supra*, 230 Md. App. at 277 (“As a general rule, courts do not entertain moot controversies.”)).

Only in rare instance will a reviewing court address the merits of a moot case. The Court of Appeals has articulated those instances as follows:

Under certain circumstances, however, this Court has found it appropriate to address the merits of a moot case. *Human Resources v. Roth*, 398 Md. 137, 143, 919 A.2d 1217, 1221 (2007). If a case implicates a matter of important public policy and is likely to recur but evade review, this court may consider the merits of a moot case. *Coburn v. Coburn*, 342 Md. 244, 250, 674 A.2d 951, 954 (1996) (“This Court in rare instances, however, may address the merits of a moot case if we are convinced that the case presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct.”); *Lloyd v. Supervisors of Elections*, 206 Md. 36, 43, 111 A.2d 379, 382 (1954) (“[I]f the public interest clearly will be hurt if the question is not immediately decided, if the matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens, or a duty of government, and upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision, then the Court may find justification for deciding the issues raised by a question which has become moot, particularly if all these factors concur with sufficient weight.”).

Suter, 402 Md. at 220.

In this case, Hogan appealed the circuit court’s May 11, 2017 finding that he was incompetent to stand trial. When the circuit court found Hogan competent to stand trial on December 5, 2017, it ended the controversy that was the subject of this appeal, such that this Court can no longer fashion an appropriate remedy. *Cottman v. State*, 395 Md. 729, 744 (2006) (a case is moot when “there is no longer any existing controversy between the parties” and the appellate court “can no longer fashion an effective remedy”).

In *Jolly v. State*, 282 Md. 353 (1978), the Court of Appeals held that a finding that a defendant is incompetent to stand trial is immediately appealable both because it is a denial of a fundamental right, i.e. the right to a speedy trial, and because it is a collateral order (an order that determines an issue separate from, and collateral to, the rights asserted in the underlying motion). The circuit court’s ruling on December 5, 2017 that Hogan was competent eviscerated the collateral order that formed the basis of this appeal.

At oral argument, Hogan’s counsel contended that this appeal is not moot because the circuit court violated his right to a speedy trial by ruling that Hogan was incompetent, which prolonged his case beyond 180 days. Indeed, we have scoured the appellant’s brief, and we find just one sentence alleging an infringement of his right to a speedy trial. Hogan has failed to provide a modicum of factual or legal support for his claim. *See Van Meter v. State*, 30 Md. App. 406, 408 (1976) (“We cannot be expected to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain his position.”). Further, we need not decide this issue at this time because there is no record for which we could decide this issue. The record is absent of any reference to a motion to dismiss filed in the circuit court and any indication whether the circuit court made a good cause finding to extend the case beyond 180 days.

In our view, the far preferable course is to permit Hogan to raise the speedy trial issue in the appeal from his convictions, to the extent he has preserved that issue. Accordingly, to the extent Hogan asserts that his right to a speedy trial was violated because of an erroneous competency finding, if preserved, he can make that argument in the direct appeal of his convictions.

We, therefore, dismiss Hogan's appeal of the circuit court's finding of incompetency for mootness.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.