UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1088

September Term, 2014

CHARLES B. McNEAL

v.

STATE OF MARYLAND

Zarnoch,
Leahy,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: August 6, 2015

*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.

Following a trial in the Circuit Court for Washington County, a jury convicted appellant, Charles B. McNeal, of solicitation to commit armed robbery, solicitation to commit robbery, and contributing to conditions leading to the delinquency of a minor. The trial court sentenced appellant to a total of 20 years in prison, consecutive to a sentence he was then serving, after which he filed a timely notice of appeal. Appellant presents the following questions for our consideration:

1. Did the pre-trial hearing court err by permitting Appellant to discharge counsel without fully complying with Maryland Rule 4-215?

2. Was Appellant denied his constitutional right to a speedy trial?

3. Was Appellant also denied his statutory right to a trial without undue delay?

For the reasons that follow, we shall affirm the rulings of the circuit court.

BACKGROUND

Appellant has not challenged evidentiary sufficiency. Therefore, we recite only the portions of the trial testimony necessary to provide context for our discussion of the issues presented. *See Washington v. State*, 180 Md. App. 458, 461 n.2 (2008).

In September 2013, appellant was incarcerated at the Washington County Detention Center with Daquon Barnes. From the Detention Center, appellant phoned then-16-year- old Shaleah Wallace to relay a message to her from Barnes, her former boyfriend. Thereafter, Wallace and appellant began a romantic telephone relationship, speaking with each other up to seven times a day; all the calls were recorded under appellant's unique inmate

identification number. At some point, the pair began to discuss robbing a bank in Pennsylvania to obtain bail money for appellant.[1]

Appellant sent Wallace six handwritten pages in an envelope bearing his name, inmate number, and Detention Center address. The mailing included a page entitled "Map and Directions," including accurate turn-by-turn directions from Wallace's home in Hagerstown, Maryland to a bank located at 841 Wayne Avenue in Chambersburg, Pennsylvania, a hand-drawn map detailing the bank and its environs, and a note to be presented to the bank teller stating:

> No Dye Packs or Bait Money! I HAVE A GUN. DON'T MAKE Me Kill Anyone! NO ALARM until After I leave! Give Me All Your Money, Top and Bottom Drawer! No Dye PACKS!

Shortly after sending the documents to Wallace, appellant called her from the Detention Center and told her she did not have to rob the bank because "I took care of it. I have my bail money and much more." Appellant discovered, however, that the person who was supposed to post his bail may not have done so and, if that were the case, he told Wallace, "it's one hundred percent that you got to go through that." Appellant and Wallace also discussed having Wallace obtain a gun from her grandparents' house.

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[1] Wallace was represented by an attorney and testified at appellant's trial in exchange for an agreement with the State that the charges against her in an unrelated case remain in juvenile court.

Wallace gave appellant's correspondence to her friend, Monica Stevens, in an attempt to elicit Stevens's help in the bank robbery. The documents were discovered by Stevens's foster mother, who turned them over to the police.

Upon questioning by the police, appellant admitted to writing all the documents encompassed in State's exhibits 1-5, but he claimed he had told Wallace to forget the plan and throw away the documents. Notwithstanding his directive, he said, Wallace had kept the documents without his knowledge and then lied to him about having done so.

On December 16, 2013, appellant filed a written motion requesting the dismissal of his assigned panel attorney, David Kindermann, and advising the court of his desire to represent himself at trial. As grounds for the discharge of his attorney, appellant stated that he had "never seen or spoken to Mr. Kinderman [sic] or [ ] received any discovery or even affidavit of probable cause."

The court heard argument on appellant's motion on January 9, 2014. The court notified appellant that it was required to "go through a colloquy with you to make sure you are [discharging counsel] knowingly, voluntarily, understandingly [sic] with the legal consequences."

Appellant confirmed that he could read and write, had obtained his GED, and was not under the influence of alcohol or drugs or under the care of a psychiatrist. The court advised appellant of the charges against him and their maximum penalties and made clear that a

lawyer would be helpful in preparing for trial, providing a defense, and presenting information that may affect disposition.

The court ruled, "I find that Defendant has knowingly, voluntarily waived his right to counsel. I accept his express waiver." The State then provided appellant with all the discovery it had given to the panel attorney. At his June 2014 trial, appellant appeared *pro se* and was convicted. Additional facts will be set forth below.

DISCUSSION

I.

Appellant first contends that the trial court erred when it permitted him to discharge his assigned panel attorney without fully complying with the mandates of Maryland Rule 4-215. The court's failure to inquire why he wanted to discharge his attorney and to ascertain that he had received a copy of the charging document, appellant concludes, mandates reversal of his convictions. He further claims that he should not be retried because had he not been permitted to discharge his attorney, the attorney "could have challenged the sufficiency of the evidence by making a motion for judgment of acquittal," and if the evidence had been deemed insufficient, "then retrial would not be permitted."

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee a criminal defendant the right to counsel. *Lopez*

v. State, 420 Md. 18, 33 (2011)(quoting *Parren v. State*, 309 Md. 260, 262 (1987)).[2] The constitutional guarantees encompass not only the right to assistance by an attorney but also the right of a defendant to reject counsel and represent himself. *Id.* But, a criminal defendant may exercise his right to self-representation only if "he knowingly, intelligently, and voluntarily waives his right to counsel." *Fowlkes v. State*, 311 Md. 586, 589 (1988).

Md. Rule 4-215 implements the constitutional mandates for waiver of counsel and provides in section (e):

> If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a) (1)-(4) of this Rule if the docket or file does not reflect prior compliance.

The requirements of Rule 4-215 are considered mandatory so as "to protect the fundamental rights involved, to secure simplicity in procedure, and to promote fairness in administration." *Parren*, 309 Md. at 280.

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[2]The Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." Article 21 of the Maryland Declaration of Rights states, in pertinent part: "[I]n all criminal prosecutions, every man hath a right. . .to be allowed counsel. . . ."

The application of Rule 4-215 to the situation before it is "entrusted to the wide discretion of the trial [court]." *Felder v. State*, 106 Md. App. 642, 651 (1995). In turn, our review of a trial court's denial of a motion based on its "'departure from the requirements of Rule 4–215'" is based on an abuse of discretion standard. *State v. Taylor*, 431 Md. 615, 630 (2013)(quoting *Pinkney v. State*, 427 Md. 77, 88 (2012)).

Pursuant to Rule 4-215(e), when a defendant requests permission to discharge his attorney whose appearance has been entered, the court must first allow the defendant the opportunity to explain why he wants to discharge the attorney. "'Allowing a defendant to specify the reasons for his request [to discharge counsel] is an integral part of the Rule and cannot be dismissed as insignificant.'" *Hawkins v. State*, 130 Md. App. 679, 686 (2000) (quoting *Williams v. State,* 321 Md. 266, 273 (1990)). Although the trial court need not engage in "a full-scale inquiry pursuant to Rule 4-215," the record must indicate that the court at least considered the defendant's reasons for requesting his attorney's dismissal before rendering a decision. *Id.* The "onus is on the trial [court] to ensure the reason for requesting dismissal of counsel is explained." *Id.*

Next, the court must determine whether the defendant's desire to discharge his counsel is meritorious. *Gonzales v. State*, 408 Md. 515, 531 (2009). In determining whether a defendant's request to discharge his attorney is meritorious, a trial court should engage in a simple three-step procedure: 1. ask the defendant why he wishes to discharge his attorney;

2. give careful consideration to the explanation, and; 3. rule whether the explanation offered was meritorious. *Id.*

Finally, if the court finds the defendant's request to be unmeritorious, the court may proceed in one of three ways: 1. deny the request, and if the defendant elects to keep his attorney, continue the proceedings; 2. permit the discharge, but require counsel to remain available on a standby basis, or; 3. grant the request and relieve counsel of any further obligation. *Id.*

In this case, appellant claims error in the circuit court's alleged failure to solicit his reasons for seeking to discharge Mr. Kindermann, give careful consideration to his explanation, and then rule whether the explanation was meritorious. In our view, the record reflects otherwise.

During the motion hearing, the court did not specifically ask appellant his reasons for wanting to discharge his attorney, but it had before it appellant's written motion to discharge his attorney, in which he had already explained that he had not seen or spoken with his attorney, nor received any discovery or the affidavit of probable cause. And, there is nothing in the record to indicate that appellant was not afforded a further opportunity, at the hearing, to advance additional reasons for his request to discharge his attorney. The court was under no obligation to conduct further inquiry to determine whether appellant had presented all his reasons for his request. The trial court's duty was only "to provide the defendant with a

forum in which to explain the reasons for his or her request" and to consider those reasons, both of which it did. *Taylor*, 431 Md. at 631.

The court did not explicitly rule on the merits of appellant's request, but we assume, given the court's grant of appellant's motion, that it did consider the merits of appellant's request to discharge his attorney and represent himself. Moreover, in our view, it was self evident that appellant's alleged reason for discharge – the utter lack of communication by counsel– was meritorious. In addition, as the State points out, it is really of no moment whether the court found merit in appellant's argument or not; in either instance, appellant was afforded the right to discharge his attorney and proceed *pro se.* In other words, if the court found appellant's reasons meritorious, it was required, pursuant to Rule 4-215, to grant the request and permit appellant to appear *pro se* or have additional time to retain a new attorney. On the other hand, if the court found the reasons for discharge unmeritorious, it could have, among other actions, granted the request and relieved the appointed attorney of his obligations to appellant.

This was not a case where the defendant was not allowed to present his reason for discharging counsel. *See Wiilliams v. State*, 366 Md 266, 272-73 (1990). Nor was he forced to trial without postponement. His trial was five months after discharge of counsel. During this period, he could have changed his mind. But he did not want another attorney and was insistent on self-representation.

There was no evidence that appellant moved to discharge his panel attorney in an attempt to "lawyer shop" or gain an otherwise unwarranted delay of his trial date. See *Gonzales*, 408 Md. at 532. He had expressed a strong desire to represent himself at trial, and the trial court agreed that his express waiver of counsel was therefore valid.

Appellant also claims that the trial court did not make certain, at the hearing, that he had received a copy of the charging document containing notice of his right to counsel, as required by Rule 4-215(a)(1). The court did not make such an inquiry of appellant during the motion hearing, but the Rule does not require an explicit inquiry; it requires only that "the record" disclose prior compliance with the subsection.

"Subsection (a)(1), unlike the other provisions [of Rule 4-215], involves only the objectively measured question of whether 'the defendant received a copy of the charging document containing notice as to the right to counsel.'" *Muhammad v. State*, 177 Md. App. 188, 249-50 (2007). Satisfaction of that subsection does not require a court to inquire of a defendant; if "evidence objectively establishes that the defendant actually received a copy of the charging document, . . . the fact that the judge failed to 'make certain' of that fact is immaterial." *Id.* at 250. The receipt of the document "speaks for itself and *ipso facto* satisfies the subsection." *Id.*

The record contains a copy of the charging document in appellant's case, which includes a notification of the right to counsel. The charging document, an information, was sealed "to maintain secrecy" pending service of an arrest warrant upon appellant. An arrest

warrant was issued, and the detective's return of service indicates that copies of the warrant and the charging document were served upon appellant at the Washington County Detention Center on September 27, 2013. The record documents sufficiently demonstrate compliance with Rule 4-215 (a)(1).[3]

II.

Appellant also argues that the trial court erred in denying his motions to dismiss the charges against him on constitutional speedy trial grounds. In his view, the approximately nine-month delay between the service of the arrest warrant upon him and the start of his trial was presumptively prejudicial, and the court should have granted his motions. In addition, he continues, the court's denial of his motions to dismiss referenced only a lack of prejudice to him in the delay, and it was error to consider only one of the four factors required for a proper analysis of his claim.

The constitutional analysis to be applied in the speedy trial context was set forth by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972). A post-indictment, pre-trial delay of sufficient length is presumptively prejudicial and thereby triggers scrutiny under *Barker*. *Glover v. State,* 368 Md. 211, 222 (2002). Once such a

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[3]Given our conclusion that appellant's waiver of counsel was valid, we need not consider his argument that a ruling in his favor would have warranted reversal without a retrial. We would reject his wholly speculative argument that an attorney may have moved for judgment of acquittal because the evidence against him may have been insufficient to sustain convictions of the crimes charged.

delay is demonstrated, the trial court must balance the following four factors to determine whether the delay has impinged upon the defendant's constitutional rights: 1. the length of the delay; 2. the reasons for the delay; 3. the defendant's assertion of his speedy trial right, and; 4. the presence of actual prejudice to the defendant. *Id.* (citing *Barker,* 407 U.S. at 530). The Court of Appeals has consistently applied the four *Barker* factors when considering an alleged violation of both the Sixth Amendment to the Constitution and Article 21 of the Maryland Declaration of Rights.[4] *Id.* at 221.

In weighing the relevant factors, none is "'either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.'" *Jules v. State*, 171 Md. App. 458, 482 (2006)(quoting *Barker*, 407 U.S. at 533).

The *Barker* Factors

Length of Delay

The length of the delay involves a "double enquiry" because a delay of sufficient length is first required to trigger a speedy trial analysis, and the length of the delay is then considered as one of the factors within that analysis. *Glover,* 368 Md. at 222-23. The Court of Appeals has noted that, for purposes of a speedy trial analysis, the length of the delay is

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[4]The Sixth Amendment states, in pertinent part: "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . ." Article 21 of the Maryland Declaration of Rights states, in pertinent part: "in all criminal prosecutions, every man hath a right. . . to a speedy trial by an impartial jury. . . ."

generally measured from the date of the defendant's arrest or the filing of an indictment. *Divver v. State*, 356 Md. 379, 388-89 (1999).

The time between the service of appellant's arrest warrant on September 27, 2013 and the start of his trial on June 24, 2014, just under nine months, is less than the one year, 14 day delay that the Court of Appeals has generally held is sufficiently inordinate to trigger the speedy trial balancing analysis. *See Epps v. State*, 276 Md. 96, 111 (1975). In *Battle v. State*, 287 Md. 675, 686 (1980), however, the State conceded, and the Court agreed, that an "eight month twenty day delay might be construed to be of constitutional dimension so as to trigger the prescribed balancing test." *Compare Gee*, 298 Md. 565, 579 (1984) (a six month delay "was not presumptively prejudicial [and therefore] there is no necessity for inquiry into the other factors which go into the balance"). Because the almost nine month delay in this matter "might be" of constitutional dimension, we will undertake a "length of delay" analysis.

We note, however, that the length of the delay, in and of itself, is not a weighty factor. *Glover,* 368 Md. at 225. In fact, the length of the delay is the least determinative of the four factors we consider in analyzing whether a defendant's right to a speedy trial was violated, *State v. Kanneh*, 403 Md. 678, 690 (2008), and, in this instance, it barely qualifies for consideration of a violation of appellant's constitutional right to a speedy trial.

Reasons for Delay

We consider all reasons for delay, but "some carry greater weight than others:

> 'Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.'

Henry v. State, 204 Md. App. 509, 550-51 (2012)(quoting *Barker,* 407 U.S. at 531).

Appellant was served with an arrest warrant on September 27, 2013. His panel attorney entered his appearance on October 15, 2013. Appellant's trial was originally set for February 13, 2014.

In a speedy trial analysis, we consider the time period between appellant's September 27, 2013 arrest and the assignment of his first trial date of February 13, 2014 as neutral. *Jules*, 171 Md. App. at 484 (the time between arrest and the first trial date is usually accorded neutral status).

On the scheduled trial date of February 13, 2014, the Circuit Court for Washington County was closed for good cause, pursuant to Administrative Order, due to a "severe snow storm causing accumulation of snow and ice upon the roads and sidewalks of Washington County and Hagerstown." Appellant's trial was rescheduled for April 21, 2014. (Docket entries). The closure of the court provides a neutral reason for the delay. *See, e.g., Osborne v. State*, 806 P.2d 272, 278 (Wyo. 1991) (Reason of delay due to inclement weather is neutral

and accorded less weight than a delay which would have been deliberately caused by the State).

On April 21, 2014, the State moved to postpone the trial date, on the ground that Shaleah Wallace had been charged, in the juvenile court, "in a new matter, also related to Mr. McNeal and also relevant to this solicitation case," but was not yet represented by counsel. It was, the State continued, "imperative that she be represented so that meaningful negotiations with her can take place to protect her rights." In addition, only a few days earlier, appellant had requested several subpoenas for documents, and "service hasn't been perfected on that," which provided another basis of good cause for postponement.

Appellant objected to the postponement and moved to dismiss the charges against him for violation of his right to a speedy trial. The administrative judge denied appellant's motion, found good cause for the postponement, and rescheduled the trial for June 24, 2014, when trial began.

Because Wallace's right to counsel was of crucial importance, she was effectively unavailable as a witness on April 21, 2014. The Court of Appeals has held: "'[A] delay caused by a missing witness might be a neutral reason chargeable to neither party.'" *Wilson v. State*, 281 Md. 640, 652 (1978) (quoting *Smith v. State*, 276 Md. 521, 528 (1976)). Although the State caused this postponement, "'a valid reason, such as a missing witness, should serve to justify appropriate delay.'" *Howard v. State,* 440 Md. 427, 448 (2014)(quoting *Barker,* 407 U.S. at 531).

Prior to the start of trial on June 24, 2014, appellant again moved for dismissal on constitutional speedy trial grounds, arguing that no delay, set forth above, had been chargeable to the defense. The trial court denied the motion, agreeing with the administrative judge's prior findings of good cause and lack of prejudice to appellant.

There were only two postponements in this matter. One was caused by the closure of the courts due to severe weather, and one was caused by the unavailability of an unrepresented juvenile witness. Neither delay resulted from negligence or gamesmanship on the part of the State, and each was neutral or, at most, lightly attributable to the State.

Assertion of the Right to a Speedy Trial

Often, the strength and timeliness of a defendant's assertion of his speedy trial right indicate whether the delay has been lengthy and whether the defendant has begun to experience prejudice from that delay. *Glover,* 368 Md. at 228. As noted in *Barker*, the strength of a defendant's efforts to assert his right to a speedy trial will be affected by the length of the delay, to some extent the reason for the delay, and by the personal prejudice he experiences. As such, "[t]he more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." 407 U.S. at 531-32.

Here, appellant did not file a written motion to dismiss based on speedy trial violation. He did, however, "invoke [his] speedy trial rights" at the January 9, 2014 hearing on his

motion to discharge his attorney and express his desire to go to trial on February 13, 2014. He moved to dismiss on the grounds of a speedy trial violation on April 21, 2014 and again at the start of trial on June 24, 2104.

As noted in *Barker*, a gauge of the prejudice to a defendant is that the more severe the deprivation, the more likely the defendant is to complain. We observe that appellant did object to the postponement and argue on three occasions that his right to a speedy trial had been violated. We therefore conclude this factor weighs in appellant's favor.

Prejudice to Appellant

Whether a defendant has suffered prejudice because of the pre-trial delay is the most significant factor in our analysis of whether his right to a speedy trial has been violated. *Jules,* 171 Md. App. at 487. According to *Barker*, the prejudice to a defendant should be assessed in light of the interests the right to a speedy trial was designed to protect: 1. the prevention of oppressive pre-trial incarceration; 2. the minimization of anxiety and concern of the accused and; 3. the limiting of the possibility that the defense will be impaired. 407 U.S. at 532. Impairment of a defense is the most serious form of prejudice to a defendant. *Howard*, 440 Md. at 449 (citing *Doggett v. United States*, 505 U.S. 647, 654 (1992)).

At no time during any of his invocations of his speedy trial right did appellant make an argument regarding any of the above factors. He was incarcerated prior to trial, but his incarceration resulted from another crime entirely; in fact, the crimes of which he was convicted in this matter all occurred while he was incarcerated on other crimes and seeking

bail money for his release. He made no argument about anxiety or concern or possible impairment of his defense.

The court found that appellant was not incarcerated "on this charge" and had had plenty of time to prepare for trial. As such, it ruled there had been no actual prejudice to the defense in terms of defending the action, and we see nothing in the record to persuade us that determination is erroneous.

Balancing Factors

A balancing of the *Barker* factors is case specific. *Glover* 368 Md. at 231-32. Although there was an almost nine-month delay in bringing appellant to trial, we consider the neutral reasons for the delay. The length of the delay and the reasons for the delay barely weigh against the State. Appellant did assert his right to a speedy trial prior to the start of trial, so that factor weighs in his favor. Appellant made no claims of prejudice from the delay, and the trial court found none.

On balance, and considering the *Barker* factors, we find that, despite the delay, appellant has not suffered prejudice that rises to the level of a violation of his constitutional right to a speedy trial. We perceive no error in the trial court's fact-finding, nor error in its ultimate ruling denying the motions to dismiss on constitutional speedy trial grounds.

III.

As his final assignment of error, appellant claims that the trial 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.[5] Appearing to concede that the administrative judge acted within his discretion in finding good cause to postpone the trial past the *Hicks* date, he nonetheless argues that the two-month delay in scheduling a trial date following the critical postponement was inordinate because there was no suggestion that a court was unavailable, that the court's docket was overcrowded, or that the State had an issue presenting its witnesses in a timely manner.

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) (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.

[5] *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 is 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."

To be read in tandem with CP §6-103 is Md. Rule 4-271, which states in section (a):

> (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.[6] *Ross v. State*, 117 Md. App. 357, 364 (1997). "[T]he critical postponement for

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[6]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." *Choate,* 214 Md. App. at 140 (quoting *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." *Id.*

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 been fulfilled." *Fields v. State*, 172 Md. App. 496, 521 (2007), *rev'd on other grounds*, 432 Md. 650 (2013).

The parties agree that the *Hicks* date in this matter was March 31, 2014.[7] On February 25, 2014, the trial was postponed until April 21, 2014, making it the critical postponement for the purposes of *Hicks.*

On February 13, 2014, the Washington County courts were closed by Administrative Order, due to severe inclement weather. On February 25, 2014, appellant's trial was

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[7]The 180th day after appellant's first appearance in the circuit court was March 29, 2014, but that date fell on a Saturday. Pursuant to Maryland rule 1-203(a)(1), then, the *Hicks* date was Monday, March 31, 2014.

The court's docket, apparently erroneously, lists the *Hicks* date as April 20, 2014, 180 days after appellant's panel attorney entered his appearance on October 22, 2013. Because the critical postponement, pursuant to either *Hicks* date, would be the same, our analysis would apply to either date.

rescheduled until April 21, 2014. There is no question that good cause was found, and the postponement on that date was valid.

Appellant argues, however, that a valid postponement of the trial date still may mandate dismissal of the charges if there is an inordinate delay in bringing the matter to trial following the postponement. The approximately two-month delay from the critical postponement until the rescheduled trial date, he says, was inordinate, with dismissal being the appropriate remedy.[8]

Indeed, 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." *Rosenbach v. State*, 314 Md. 473, 479 (1989). The burden of showing that the post-postponement delay is excessive, in light of all the circumstances, however, is on the defendant. *Id*. Appellant has not met that burden here.

In assessing whether the delay was inordinate, we are concerned only with the amount of time between the critical postponement date and the rescheduled trial date that follows it. *See Brown*, 355 Md. at 109 ("[W]hen deciding whether to dismiss a case for inordinate delay, it is the length of the delay between the postponed trial date and the rescheduled date

[8]Appellant also argues that the 64 days between the first rescheduled trial date on April 21, 2014 and the actual start of trial on June 24, 2014 was the "[m]ost problematic" because no reason was advanced by the court for the delay. Because we are concerned only with the amount of time between the critical postponement and the rescheduled date that follows it, *see infra*, we do not consider this argument. Were we to do so, however, we would not find the elapsed time excessive.

that is significant"). The critical postponement in this matter occurred on February 25, 2014, when the trial was postponed until April 21, 2014, only 55 days later. In view of all the circumstances, we cannot say that the delay was inordinate. *See Rosenbach*, *supra* (characterizing 78-day delay as insufficient to meet defendant's burden of showing inordinate delay); *State v. Bonev*, 299 Md. 79 (1984) (delay in excess of three months not a clear abuse of discretion); *State v. Frazier*, *supra* (1984) (no inordinate delay where delays ranged from slightly under three months to almost four months).

For all the foregoing reasons, the circuit court did not abuse its discretion in denying appellant's motion to dismiss as a result of a *Hicks* violation.

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