UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1798

September Term, 2014

TIMOTHY DAVIS

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: September 23, 2015

Appellant, Timothy Davis, was tried and convicted by a jury in the Circuit Court for Prince George's County of two counts of armed robbery and related offenses. The trial court sentenced appellant to a total of 28 years in prison, after which he filed a timely notice of appeal.

Appellant presents the following question for our consideration: Did the trial court err in denying the motion to dismiss on *Hicks* grounds? For the reasons that follow, we shall affirm the judgments of the trial court.

BACKGROUND

Because the facts of the underlying crimes 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 robbery of two Sunoco gas station cashiers of approximately $40 in cash, brandishing what appeared to be a handgun but that was later determined to be a BB gun.

Defense counsel entered his appearance on October 1, 2013, and appellant's trial was initially scheduled for January 29, 2014. The *Hicks* date, before which trial was required to commence, was March 30, 2014.[1]

When the parties appeared in court on January 29, 2014, defense counsel requested a postponement, on the ground that the "[d]efense is not as prepared as I think we need to

[1]*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 referred to as the "*Hicks* date."

be." Although the prosecutor noted he was then ready for trial, he did not object to the postponement, and the administrative judge reset trial for March 17, 2014.

On March 17, 2014, the Circuit Court for Prince George's County was closed "due to inclement weather." By order dated March 18, 2014, but entered March 31, 2014, Judge Pearson, sitting as the designee of the administrative judge, found good cause to continue the matter past the *Hicks* date and ordered trial to be "reset by the Office of Calendar Management." Trial was reset to May 20, 2014, when it began.

At the start of the second day of trial, defense counsel moved to dismiss the charges against appellant based on an alleged *Hicks* violation. The trial court, pointing out that the parties were then in the middle of trial, advised counsel it would consider the issue preserved but would "deal with it later."

After the jury was excused to deliberate, defense counsel argued that the March 18, 2014 postponement of the trial until May 20, 2014 violated *Hicks* and appellant's "rights to protection under the *Hicks* rule." The following colloquy and ruling ensued:

> THE COURT: All right. So the record is clear, it looks to me, from a review of the file, that the trial was originally scheduled for January 29th and continued that day at the Defendant's request because counsel was not prepared. It was reset for March 17th. And March 17th the court was closed because of inclement weather. So obviously it had to be continued from that day. *Hicks* was March 30th.
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> * * *
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> [DEFENSE COUNSEL]: … Well, again, having it not published until the 31st, I think reinforces Mr. Davis's grievance.

THE COURT: Well, so March 30th is what the docket is showing is the *Hicks* day, 180 days from the initial arraignment, which was October 4th[2] So November, December, January, February, March---April 4th minus the shortened days for – I guess for February.

So it's somewhere around the end of March, beginning of April, but Judge Pearson entered an order March 18th, the first day after court resumed after the snow. It's dated that day. The clerk's office didn't file it, that order, until the 31st of March which would have been after the *Hicks* date.

But it appears that the good cause finding by Judge Pearson, who was the administrative judge's designee for those purposes, was for later. So it appears that it was done, it was done promptly, timely.

I can only surmise based on the evidence that – and my own knowledge of the way the court system operates is that we can't – cases are – the docket is booked up until a couple of months in advance.

So if we lose a day because of snow or otherwise, we can't just carry them over to the next day because there are cases due to sit – due to start that next day.

So my surmise is that Judge Pearson, as the designated judge with knowledge of the Court's calendar had that in mind when the case was reset for today, [May] 20th.

So I'm going to deny the motion to dismiss. And obviously, if you have any additional information, I will be happy to hear it, but based on what I have seen here, it does seem to be that there was compliance with the rule and that the case was continued beyond the *Hicks* date because of initially Defendant's being unable to go forward, and then subsequently because the court was closed due to inclement weather.

DISCUSSION

Appellant contends that the trial court abused its discretion when it postponed his trial past the *Hicks* date and thereafter declined to dismiss the charges against him on that

[2] Defense counsel entered his appearance on October 1, 2013. The docket entries for that date indicate "Initial Arraignment Moot." March 30, 2014, the undisputed *Hicks* date, is 180 days from October 1, 2013, not October 4, 2013.

ground. Conceding that the postponement of the March 17, 2014 trial date, due to the closure of the courts for inclement weather, was for good cause, and that the two month delay of trial until May 20, 2014 was not inordinate, appellant nonetheless argues that: 1) the State was required to ensure that his trial began before the March 30, 2014 *Hicks* date or to secure a ruling from the administrative judge explaining why that was not possible, and; 2) he was entitled to notice of the postponement past the *Hicks* date and a hearing before the trial was postponed. We disagree.

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:
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> (i) the appearance of counsel; or
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> (ii) the first appearance of the defendant before the circuit court, as provided in the Maryland Rules.
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> (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:
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> (i) on motion of a party; or
>
> (ii) on the initiative of the circuit court.

We read CP §6-103 in tandem with 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) together 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 (2013). 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.[3] *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).

A determination by the administrative judge to postpone trial past the *Hicks* date is given "wide discretion" and carries a "heavy presumption of validity." *Fields v. State*, 172 Md. App. 496, 521 (2007). "If it is the administrative judge who extends the trial date and

[3] 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 efficient 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*.

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." *Id*.

There is no dispute that the *Hicks* date in this matter was March 30, 2014. On March 18, 2014, the trial was postponed until May 20, 2014, making it the critical postponement for the purposes of *Hicks.*

The administrative judge's designee granted the postponement on that date due to inclement weather, which closed the courts on March 17, 2014. The administrative judge's designee found good cause to postpone the trial, a finding that appellant does not dispute. Nor does appellant argue that the approximately two-month delay until the rescheduled trial date was inordinate. Instead, appellant asserts that before postponing the trial, the court should have afforded him notice and the right to be heard regarding the postponement. He further contends that, on March 18, 2014, the State should have attempted to reschedule the trial within the eight business days remaining before the *Hicks* date of March 30, 2014.

As the State correctly points out, however, neither CP §6-103, Rule 4-271, nor applicable case law details any such procedural requirements. Moreover, appellant was indeed on notice of the postponement, by the very fact that the court closed on the date that his trial was scheduled to begin. And, because the court postponed the trial upon its own initiative, a hearing would have served no practical purpose; instead, it would have prolonged the already logistically difficult task of rescheduling the trials displaced by the closure of the courts on March 17, 2014.

With regard to appellant's claim that the State should have attempted to reschedule the trial within the eight business days before the *Hicks* date, the Court of Appeals has explained:

> [W]e hold that the statute and rule do not require the administrative judge or that judge's designee to make a specific finding that a postponement will take the case beyond the 180-day limit, or to postpone a case to some specific future date. We reiterate that the latter may be desirable, but note that it may not always be feasible. Other steps to assure prompt determination of a new trial date may also be desirable. For example, at the time of postponement, counsel may be directed to go forthwith to the appropriate assignment office and obtain then and there a new trial date. But none of these approaches is mandated by the statute or rule. It is enough that the postponement be made by the administrative judge or designee, that it be for good cause, and that there be no inordinate delay between the postponement and the eventual trial.

Rosenbach v. State, 314 Md. 473, 480 (1989). Moreover, the administrative judge "has an overall view of the court's business," and when that judge (or his designee) 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." *State v. Frazier*, 298 Md. 422, 453-54 (1984). As such, in the absence of anything in the record to suggest otherwise, we presume that the administrative judge's designee, armed with this knowledge, assigned the new trial date as expeditiously as possible.[4]

[4] Indeed, the trial court explained to the parties that, based on its own knowledge "of the way the court system operates," if a trial date is lost to inclement weather that closes the courthouse, it is generally not possible to carry the trial over to the next day because the docket is "booked up" for several months. The administrative judge's designee, "with knowledge of the Court's calendar had that in mind when the case was reset to . . . [May] 20th."

We therefore find no merit in appellant's arguments, and we conclude that the trial court did not err or abuse its discretion in denying appellant's motion to dismiss on the ground of a *Hicks* violation.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.