

Circuit Court for Carroll County
Case No. 06-K-13-44823

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 895

September Term, 2016

STEVE HOGAN

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: September 14, 2017

*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.

This appeal concerns the timeliness of the trial of Appellant Steve Hogan. Hogan argues that the circuit court erred when it: (1) denied his motion to dismiss for a *Hicks* violation,¹ and (2) denied his motion to dismiss for a Sixth Amendment speedy trial violation.²

BACKGROUND

Hogan was charged in the Circuit Court for Carroll County with a variety of burglary and assault charges arising out of an altercation with a neighbor. Hogan’s counsel entered his appearance in the circuit court on January 15, 2014, thereby establishing a *Hicks* deadline of July 14, 2014. Trial was set for March 24, 2014. On the scheduled day of trial, Hogan requested a postponement to allow for a neurological evaluation. The circuit court granted Hogan’s request and rescheduled the trial for May 27, 2014. When the new trial date arrived, the State filed a motion to suppress testimony regarding Hogan’s neurological condition. The circuit court determined that a hearing was necessary to consider the admissibility of the evidence. To accommodate the scheduling of a hearing, the circuit

¹ *Hicks* refers to *Hicks v. State*, 285 Md. 310 (1979), now codified in Md. Rule 4-271 and Section 6-103 of the Criminal Procedure (“CP”) Article of the Maryland Code. *Hicks* requires that a criminal defendant be brought to trial within 180 days after the earlier of (1) the appearance of counsel, or (2) the first appearance of the defendant before the circuit court, unless good cause is shown for the delay. *Hicks*, 285 Md. at 315-16.

² Hogan also raises two claims of ineffective assistance of counsel. Except in rare circumstances, claims of ineffective assistance are best made in post-conviction proceedings where the circuit court can act as a fact-finder to more fully understand the allegations being made. *Ware v. State*, 360 Md. 650, 706 (2000). Therefore, we decline to consider the merits of these claims.

court made a finding of good cause and postponed the trial beyond the *Hicks* deadline of July 14, 2014.

On July 28, 2014, Hogan changed counsel, restarting the pretrial process. Hogan's new counsel filed pretrial motions, including motions to dismiss alleging violations of *Hicks* and the Sixth Amendment right to a speedy trial. The motions were denied on November 13, 2014, and the circuit court set a new trial date of December 1, 2014.

The State was unable to proceed to trial on December 1, 2014 due to the sudden death of the prosecutor who had been handling the case. The circuit court granted the State's request for a postponement. Before the trial could be rescheduled, however, a competency evaluation was done at Hogan's request and he was found not competent to stand trial. After a lengthy delay, on November 24, 2015, the circuit court found that Hogan had regained competence to stand trial and set a new trial date of April 18, 2016.

Hogan's case proceeded on April 18, 2016. After a three-day trial, the jury convicted him of both burglary and assault. Hogan noted a timely appeal to this Court.

ANALYSIS

Hogan argues that the various delays before his trial violated *Hicks* and denied him his Sixth Amendment right to a speedy trial.

I. *Hicks*

Hogan first contends that the circuit court erred in denying his motion to dismiss for a *Hicks* violation because his trial was not held within 180 days from the date on which his

first counsel entered his appearance. The State responds that this Court should dismiss Hogan’s appeal because, pursuant to Rule 8-504(a), Hogan submitted an insufficient written brief. Alternatively, we are urged to affirm the circuit court because it did not abuse its discretion when it found good cause to postpone Hogan’s trial beyond the *Hicks* date of July 14, 2014. We agree with the State on both points.

The scheduling of a trial date in a criminal matter is governed by Section 6-103 of the Criminal Procedure (“CP”) Article and Rule 4-271. Together they require that, absent a showing of good cause, “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). This 180-day rule is “mandatory and dismissal of the criminal charges is the appropriate sanction for violation of that time period” if good cause for the delay has not been established. *Ross v. State*, 117 Md. App. 357, 364 (1997); *see also Hicks*, 285 Md. at 318. “For good cause shown, [however,] the county administrative judge ... may grant a change of the trial date” beyond the 180-day deadline.” CP § 6-103(b)(1); *see also* Md. Rule 4-271(a)(1). For purposes of *Hicks*, a finding of good cause is only necessary for the court order that extends a postponement beyond the 180-day deadline. *State v. Brown*, 355 Md. 89, 108-09 (1999) (“[T]he critical postponement for purposes of Rule 4-271 is the one that carries the case beyond the 180 day deadline.”). “The [circuit court] enjoys wide discretion in deciding good cause, and [its] determination carries a heavy presumption of validity.” *Tapscott v.*

State, 106 Md. App. 109, 122 (1995) (citations omitted). We review a circuit court’s decision for “either a clear abuse of discretion or a lack of good cause as a matter of law.” *Brown*, 355 Md. at 98 (citation omitted).

We first consider the State’s request that we dismiss this aspect of Hogan’s appeal pursuant to Rule 8-504(a). Even so, we choose to analyze the merits of Hogan’s claim that *Hicks* was violated.

A. Rule 8-504

An appellate brief must comply with Rule 8-504, which provides, in pertinent part:

(a) Contents. A brief shall ... include the following ... :

* * *

- (4) A clear concise statement of the facts material to a determination of the questions presented ... Reference shall be made to the pages of the record extract supporting the assertions. If ... a record extract is not filed, reference shall be made to the pages of the record or to the transcript of testimony as contained in the record.

* * *

- (5) A concise statement of the applicable standard of review for each issue

* * *

- (6) Argument in support of the party’s position on each issue.

* * *

Md. Rule 8-504(a). According to the Rule, a brief must include all facts, including citations to the record, necessary to determine the legal questions presented in light of the applicable standard of review and the arguments that support the party's position. The Rule is mandatory and "[f]or noncompliance ... the appellate court may dismiss the appeal." *Id.* at (c); *see also Donati v. State*, 215 Md. App. 686, 743 (2014) ("Because appellant has not presented sufficient legal or factual arguments for this Court to address this claim, we decline to consider it.").

For a defendant to prevail on a motion to dismiss for a *Hicks* violation, the party arguing that the rule was violated must acknowledge that *Hicks* has a good cause exception that allows for the postponement of a defendant's trial date beyond 180 days. The party must also cite facts from the record and make legal arguments to explain why there was no good cause for a postponement, or why the circuit court abused its discretion when it found that there was good cause.

Hogan's brief is insufficient in this regard, and therefore warrants dismissal of the *Hicks*-based portion of his appeal. Hogan simply recites the *Hicks* deadline and makes a conclusory statement that *Hicks* was violated. Hogan states that, "[t]rial in this matter did not commence until almost two full years after the *Hicks* date ... Hogan repeatedly demanded that the trial commence before the *Hicks* deadline. ... The Court of Appeals has made it clear that dismissal of charges [is proper] when a lower court allows a criminal trial beyond the *Hicks* deadline. ... The conviction should be reversed." Hogan's brief fails

to recognize that there is a good cause exception to the *Hicks* rule. He does not address the specific postponement that extended his trial beyond the *Hicks* date, nor the purpose for that postponement. He further neglects to acknowledge that the circuit court found good cause for the postponement, or make any consequent allegation that the circuit court abused its discretion in finding such good cause. Due to these omissions and Hogan's noncompliance with Rule 8-504(a)(4)-(6), we dismiss this portion of Hogan's appeal.

B. Good Cause

Notwithstanding this dismissal, we would not find, on this record, that the circuit court abused its discretion in determining that good cause existed to exceed the 180 day limit. "Although ... there is no absolute or *per se* definition of good cause," this Court has held that good cause for a postponement exists when evidence or evaluations necessary for the defense require a postponement. *State v. Farinholt*, 54 Md. App. 124, 135 (1983); *Thompson v. State*, 229 Md. App. 385, 399 (2016) (good cause found for a postponement when waiting for competency evaluation results).

In the present case, the circuit court found good cause to postpone beyond the *Hicks* date to allow for an additional and necessary hearing regarding the admissibility of expert testimony proffered by Hogan. The circuit court noted that Hogan's counsel "believed [this testimony was] very important to its case," and that resolution of its admissibility was necessary for Hogan's defense. There is no argument that this decision was erroneous and

we cannot imagine how such an argument could be made cogently. Thus, we do not see an abuse of discretion.

II. Sixth Amendment Speedy Trial

Hogan also argues that the circuit court erred in denying his motion to dismiss for violation of his constitutional right to a speedy trial. Again, the State responds that this Court should dismiss this aspect of Hogan’s appeal because he fails to adequately present this argument in his brief, or in the alternative, affirm the circuit court’s judgment because the reasons for the lengthy delay are attributable to Hogan himself, and therefore his Sixth Amendment right to a speedy trial was not violated. Again, we agree with the State on both points.

The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to a speedy trial.³ *Barker v. Wingo*, 407 U.S. 514, 532 (1972). The test for determining whether a defendant has been deprived of the right to a speedy trial is a four-factor balancing test that evaluates: “[1] length of delay, [2] the reason for the delay, [3] the defendant’s assertion of his right, and [4] prejudice to the defendant.” *Barker*, 407 U.S. at 530. The first factor—length of delay—is “actually a double [inquiry]” that initially functions as a threshold question to identify whether a delay is of constitutional

³ Article 21 of the Maryland Declaration of Rights contains a similar provision, stating in part, that “in all criminal prosecution, every [person] hath a right ... to a speedy trial” Hogan has not offered an argument regarding Article 21, so we will consider his appeal solely as a Sixth Amendment matter.

significance. *Doggett v. United States*, 505 U.S. 647, 651-52 (1992). If constitutional scrutiny is triggered, all four *Barker* factors are evaluated. *Id.* at 651-52. The length of the delay is then balanced among them to weigh “the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim.” *Id.* at 652.

The second factor—the reason for the delay—must be carefully weighed to determine if the State made a “diligent, good-faith effort to bring [the defendant]” to trial. *Moore v. Arizona*, 414 U.S. 25, 26 (1973). A Sixth Amendment speedy trial challenge may be decided on this second factor alone. *Langworthy v. State*, 46 Md. App. 116, 119 (1980) (“This entire case rises or falls upon our consideration of the single factor of reason for the delay ...”). Different reasons for a delay are given different weight. *Barker*, 407 U.S. at 531. A deliberate, intentional delay caused by the State is weighted heavily against it. *Id.* “A more neutral reason, such as negligence or overcrowded courts” is weighted less heavily against the State. *Id.* A “valid reason, such as a missing witness,” justifies an appropriate delay. *Id.* When the reason for the delay “was in major measure either caused by the appellant himself or occasioned by provisions of our law intended to benefit the appellant,” however, the delay is attributed to the appellant and no further analysis under *Barker* is required. *Langworthy*, 46 Md. App. at 130. “In reviewing the judgment on a motion to dismiss for violation of the constitutional right to the speedy trial ... we perform a *de novo* constitutional appraisal in light of the particular facts of the case at hand; in so

doing, we accept a lower court’s findings of fact unless clearly erroneous.” *Glover v. State*, 368 Md. 211, 220-21 (2002) (citations omitted).

Again, we first consider the State’s request that we dismiss this portion of Hogan’s appeal pursuant to Rule 8-504(a), and then, for the sake of completeness, analyze the merits of Hogan’s Sixth Amendment speedy trial claim.

A. Rule 8-504

As explained, Rule 8-504(a)(4)-(6) requires that an appellate brief must include all facts, including citations to the record, necessary to determine the legal questions presented in light of the applicable standard of review and the arguments that support the party’s position. An appellate court may dismiss an appeal for a party’s failure to present arguments adequately in its brief. Md. Rule 8-504(c). A lengthy pre-trial delay is typically caused by an aggregate of different events. As such, an appellate brief that complains of a Sixth Amendment speedy trial violation typically identifies, in chronological fashion, the events that triggered the delays and the duration of those delays, and attempts to attribute the reasons for those delays to the State.

In the present case, we note that Hogan does provide some factual support for his argument on the first *Barker* factor—alleging that the length of delay was prejudicial. Hogan also offers factually-based arguments on the third and fourth *Barker* factors—that he asserted his right to a speedy trial and that he suffered actual prejudice because of the delay. Where Hogan’s brief fails, however, is in neglecting to cite facts or properly

articulate any arguments regarding the second *Barker* factor—the reason for the delay. Pertaining to this critical question, Hogan writes that “[c]oncerning the reason for the delay, *there was no good reason.*” (Emphasis added). This is insufficient. Hogan fails to identify the relevant events that caused the periods of delay and the reasons for those delays, nor does he make arguments that those postponements should be charged to the State. Because of Hogan’s failure to submit a sufficient brief pursuant to Rule 8-504, we dismiss this portion of Hogan’s appeal.

B. Reason for the Delay

Even if Hogan had presented a competent brief pursuant to Rule 8-504(a), we would not find, based on this record, that Hogan was denied his constitutional right to a speedy trial. We recognize that the length of Hogan’s delay, nearly two-and-a-half years, would generally be considered one of constitutional significance and trigger a full *Barker* analysis. *See Glover*, 368 Md. at 224 (holding that a fourteen-month delay triggered a constitutional analysis); *Divver v. State*, 356 Md. 379, 389 (1999) (holding that a twelve-and-a-half month delay required a constitutional analysis). Hogan’s appeal, however, fails on the second *Barker* factor—the reason for the delay. A brief review of each delay and the corresponding reasons for it show that most of the delay was for Hogan’s benefit, caused by Hogan, or not to be counted against either side.

- December 4, 2013–March 24, 2014: *time before the first trial date*

The time preceding a scheduled trial date, where the parties are engaged in pre-trial preparation, is considered neutral and thus not chargeable to either side. *Malik v. State*, 152 Md. App. 305, 318 (2003).

- March 24, 2014–July 27, 2014: *defense postponement for a neurological exam and ensuing litigation*

The delay from March 24, 2014 until July 27, 2014, was caused by the litigation of the admissibility of Hogan’s neurological evaluation. Hogan’s counsel “believed [this testimony was] very important to its case,” and a resolution of its potential admissibility was necessary for Hogan’s defense. This delay was for Hogan’s benefit and thus chargeable to him. *See Langworthy*, 46 Md. App. at 130.

- July 28, 2014–December 1, 2014: *Hogan’s decision to change counsel, restart of pre-trial preparation*

The delay caused by Hogan’s decision to change defense counsel was for his benefit presumably, and is, therefore, chargeable to Hogan. *See Langworthy*, 46 Md. App. at 130. The ensuing time needed for new counsel to file motions and prepare for trial is therefore either chargeable to Hogan, or is considered neutral and not chargeable to either side.

- December 1, 2014–January 28, 2015: *complications in the State’s Attorney’s Office*

The only delay attributable to the State is the two months resulting from the sudden death of the prosecutor who had been handling Hogan’s case. Due to the nature of the delay, however, it does not weigh heavily against the State. *See Ferrell v. State*, 67 Md.

App. 459, 464 (1986) (stating that while a period where the prosecutor became ill was chargeable to the State, “the State is less culpable” for such a delay).

- January 28, 2015–November 24, 2015: *defense motion for a competency evaluation*

The longest delay, from January 28, 2015, until November 24, 2015, was due to the determination that Hogan was not competent to stand trial. Competency evaluations are considered a benefit for a defendant and do not count towards a speedy trial violation. *Lewis v. State*, 79 Md. App. 1, 17 (1989) (“[D]elays ... caused by examinations to determine [a] defendant’s competence are charged against the defendant because such evaluations are solely for his benefit.”).

- November 24, 2015–April 18, 2016: *time before the second trial date*

Once Hogan was found competent to stand trial, it was necessary for both sides to have adequate time to prepare. This time is therefore neutral and not chargeable to either side. *See Malik*, 152 Md. App. at 318.

We conclude that because the bulk of the delay in Hogan’s case was either for Hogan’s benefit, caused by Hogan, or not to be counted against either side, the circuit court did not err in denying his motion to dismiss.

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**