

Circuit Court for Prince George's County
Case No. CT221108X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2213

September Term, 2023

DERRELL MARCEL BROWN

v.

STATE OF MARYLAND

Friedman,
Ripken,
Kehoe, S.,

JJ.

Opinion by Friedman, J.

Filed: November 19, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Derrell Marcel Brown was tried and convicted by a jury and sentenced by a judge of the Circuit Court for Prince George’s County as follows:

<u>Count</u>	<u>Charge</u>	<u>Sentence</u>
3	Use of a handgun in a crime of violence	11 years, suspend all but 7 years
4	First-degree assault	11 years, suspend all but 7 years, concurrent to Count 3
5	Reckless endangerment	5 years, concurrent to Count 3
6	Second-degree assault	No sentence, merged into Count 4
7	Wear, carry, or transport a loaded handgun	3 years, concurrent to Count 3
8	Wear, carry, or transport a handgun	3 years, concurrent to Count 3

Brown presents three questions for our review, which we have rephrased:

1. Did the circuit court err in denying Brown’s motion to dismiss because his trial commenced after his *Hicks* date?
2. Did the circuit court err in failing to merge Brown’s sentence for reckless endangerment (Count 5) into his sentence for first-degree assault (Count 4)?
3. Did the circuit court err in failing to merge Brown’s sentence for wear, carry, or transport a handgun (Count 8) into his sentence for wear, carry, or transport a loaded handgun (Count 7)?

Because we hold that there was good cause to postpone the commencement of trial, we reject Brown’s first argument. The State confesses error, and we agree, with respect to the second and third arguments and as a result, we vacate his sentences for reckless endangerment (Count 5) and for wear, carry, or transport a handgun (Count 8).¹

¹ Because the details of Brown’s crimes and trial are irrelevant to our resolution of the issues presented, we omit them.

DISCUSSION

I. *HICKS DATE*

As must be familiar to all involved in the criminal law, Md. Code § 6-103 of the Criminal Procedure (“CP”) Article and Md. Rule 4-271 impose a 180-day deadline—called the *Hicks* date after the case which first enunciated the principle²—by which the State must bring a criminal defendant to trial. This deadline may, however, be extended by the defendant consenting to postponement or for “good cause” as decided by the administrative judge or that judge’s designee. MD. R. 4-271(a); *Jackson v. State*, 485 Md. 1, 17-18 (2023). We are extremely deferential to an administrative judge’s determination of the existence of good cause. *Tunnell v. State*, 466 Md. 565, 589 (2020); *Tapscott v. State*, 106 Md. App. 109, 122 (1995).

Due to a confluence of factors, Brown’s trial was inadvertently scheduled beyond his *Hicks* date. The Maryland Electronic Courts (MDEC) system reported that Brown’s *Hicks* date was March 25.³ Consequently, Brown’s case was set for trial on the morning of Monday, March 13. When the case was called, however, defense counsel was busy in another courtroom and asked that the case be held over until the afternoon. When the parties returned that afternoon, there were insufficient jurors to begin the voir dire process. As a result, the judge held the case over to the next available date, Thursday, March 16. On the morning of March 16, Brown made a motion to dismiss because, he argued, contrary to

² *State v. Hicks*, 285 Md. 310 (1979).

³ All relevant dates occur in 2023.

MDEC, his *Hicks* date was actually March 15. The judge denied the motion to dismiss, trial lasted three days, and, as was reported above, Brown was convicted and sentenced.

The parties now agree—and our review of the record confirms—that notwithstanding the erroneous date in MDEC, Brown’s *Hicks* date was actually March 15 and that, as a result, trial started one day late. Moreover, the parties agree—and we have again confirmed—that Brown’s counsel did not seek or expressly consent to a trial date after the *Hicks* date. As a result, the only way in which Brown’s trial commencing on March 16 could be acceptable is if the judge made a finding that good cause existed to postpone the trial until after his *Hicks* date.

Although the judge here did not expressly state that good cause existed, we nevertheless affirm the denial of Brown’s motion to dismiss. *First*, there is no doubt that court unavailability can provide good cause to postpone beyond the *Hicks* date, and the record here makes it clear that such good cause existed. *Choate v. State*, 214 Md. App. 118, 140-41 (2013) (recognizing that good cause exists where the prosecutor is scheduled to try another case); *State v. Frazier*, 298 Md. 422, 462 (1984) (holding that docket congestion provides good cause to postpone beyond the *Hicks* date). *Second*, we refuse to hold that a judge is required to recite any particular magic words to make a good cause finding effective. *State v. Fisher*, 353 Md. 297, 309 (1999) (holding that administrative judges need not expressly find or articulate a reason for good cause to postpone). And *third*, it would be particularly unfair to hold here, when no party in the courtroom knew—much less told the judge—that saying the phrase “good cause” was necessary. Remember, on March 13, everyone believed that Brown’s *Hicks* date was March 25, and that the postponement was

within Brown's *Hicks* date. Thus, of course, no one even knew that a good cause finding was necessary.

Given these circumstances, we affirm the denial of Brown's motion to dismiss.

II. SENTENCE MERGER

It is well-established that multiple sentences for the same conduct violates the double jeopardy clause of the Fifth Amendment as incorporated to the states through the Fourteenth Amendment.⁴ *Benton v. Maryland*, 395 U.S. 784, 794 (1969); *Blockburger v. United States*, 284 U.S. 299 (1932). Brown argues that this required the merger of two groups of two of his sentences. The State agrees. And for the reasons that follow, we concur.

Maryland recognizes three methods for the merger of sentences. *First*, under the required evidence test, one offense merges into another when both arise from the same act or acts and the elements of one criminal law provision are entirely encompassed by the other. *Blockburger*, 284 U.S. at 304; *Clark v. State*, 218 Md. App. 230, 254 (2014). When this occurs, the defendant's conviction for the lesser-included offense merges into the conviction for the greater offense. *Second*, the rule of lenity allows the court to resolve any ambiguities regarding the General Assembly's intent to punish a crime with multiple punishments in favor of the defendant. *Latray v. State*, 221 Md. App. 544, 555 (2015). *Finally*, a court may merge separate sentences for the same wrongdoing as a matter of fundamental fairness. *Carroll v. State*, 428 Md. 679, 697 (2012).

⁴ The Fifth Amendment to the United States Constitution provides that "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." U.S. CONST. amend. V.

A. Reckless Endangerment/First-Degree Assault

As noted above, Brown was convicted and separately sentenced for the crimes of first-degree assault and reckless endangerment. In *Marlin v. State*, we held that, under the rule of lenity and fundamental fairness, these crimes merge for sentencing.⁵ 192 Md. App. 134, 171 (2010). When we apply that holding here, we must vacate Brown's sentence for reckless endangerment.

B. Wear, Carry, or Transport a Handgun/Wear, Carry, or Transport a Loaded Handgun

Brown was convicted and sentenced for two separate crimes under § 4-203(a)(1) of the Criminal Law article of the Maryland Code, subsection (i), which prohibits wearing, carrying, or transporting a handgun, and subsection (v), which prohibits the same conduct if the handgun is loaded. According to the required evidence test, subsection (i) is a lesser-included offense of subsection (v) and as the State concedes, he cannot be punished for both. As a result, we vacate his sentence for wear, carry, or transport a handgun.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED IN PART, VACATED IN
PART. SENTENCE FOR RECKLESS
ENDANGERMENT VACATED.
SENTENCE FOR WEAR, CARRY, OR
TRANSPORT A HANDGUN VACATED.
ALL OTHER JUDGMENTS AFFIRMED.**

⁵ Specifically, a single act may suffice to bring multiple convictions, but when the victim of those offenses suffers a single harm, then a defendant should only face one punishment. *Marlin v. State*, 192 Md. App. 134, 171 (2010) (citing *Manokey v. Waters*, 390 F.3d 767, 771 (4th Cir. 2004)).

**COSTS ASSESSED TO THE STATE OF
MARYLAND.**