Circuit Court for Harford County
Case No. 12-K-15-001468

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2455

September Term, 2017

WILLIAM JAMAL WRIGHT

v.

STATE OF MARYLAND

Wright,
Kehoe,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: March 22, 2019

*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.

Appellant William Jamal Wright entered an *Alford* plea in the Circuit Court for Harford County to home invasion, robbery with a dangerous weapon, and first degree assault. Appellant presents the following questions for our review:

> "1. Did the trial court err by denying Mr. Wright's motions to dismiss pursuant to Md. Rule 4-271, [Maryland Code, Criminal Law Article, § 6-103], and *State v. Hicks*, 285 Md. 310 (1979)?
>
> 2. Did the trial court err by denying Mr. Wright's motion to dismiss for violation of his constitutional right to a speedy trial?"

Finding no error, we shall affirm.

I.

The Grand Jury for the Circuit Court for Harford County indicted appellant for home invasion, armed robbery, first degree assault, and fourteen related charges on October 6, 2015. Following a series of hearings and postponements, appellant filed two *pro se* motions to dismiss the case on January 24, 2018: one for violation of his constitutional right to a speedy trial, and one for violation of the 180-day trial deadline pursuant to Maryland Rule 4-271. The circuit court denied both motions and accepted appellant's conditional *Alford* plea, which preserved his ability to argue speedy trial and *Hicks* violations upon appeal.[1] The circuit court sentenced appellant to a term of incarceration of

[1] An *Alford* plea is "a specialized type of guilty plea where the defendant, although pleading guilty, continues to deny his or her guilt, but enters the plea to avoid threat of greater punishment." *Ward v. State*, 83 Md. App. 474, 478 (1990) (citing *North Carolina v. Alford*, 400 U.S. 25, 37 (1970)). A "conditional plea of guilty" means a guilty plea with which the defendant preserves in writing any pretrial issues that the (footnote continued . . .)

twenty-five years, all but twenty suspended, for home invasion; twenty years, suspended, for robbery with a dangerous weapon; and twenty-five years, suspended, for first degree assault. Appellant now seeks review of the circuit court's denial of his motions to dismiss.

As background in this case, we set out a brief recitation of the facts. On September 10, 2015, appellant and a woman entered a residence and robbed the homeowners at gunpoint, stealing cash and jewelry worth over $40,000. Appellant pointed a gun at a caregiver in the house.

In October 2015, the State filed a seventeen-count indictment charging appellant with home invasion and related offenses, and the circuit court issued a warrant for his arrest two days later. Appellant surrendered to authorities in Nevada in May 2016, and the State extradited him. He was detained at the Harford County Detention Center on July 3, 2016. He then applied for the services of the Office of the Public Defender. A public defender (Counsel Number One) entered an appearance listing an erroneous case number, 12-K-09-001468, on July 12, 2016. Counsel Number One entered an appearance under the correct case number, 12-K-15-001468, on September 16, 2016, which "incorporate[d] by reference" to the earlier improperly filed entry a Motion for Speedy Trial.[2] Authorities

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defendant intends to appeal, and "[a]n appeal from a final judgement entered following a conditional plea of guilty may be taken in accordance with the Maryland Rules." Md. Code, Cts. & Jud. Proc. Art., § 12-302(e) (2018).

[2] The entry of appearance contained generic language stating:

> "This entry of appearance shall be deemed to incorporate by reference and include the filing of the Defendant's Request for Discovery and Motion to Produce Documents, and the Motions pursuant to Maryland Rule 4-252, the (footnote continued . . .)

served appellant with his indictment three days later. On October 11, 2016, both parties agreed to a scheduling order that set trial for January 19, 2017.

On December 23, 2016, upon counsel's motion the circuit court struck Attorney One's appearance because of a conflict of interest and assigned appellant's case to a panel attorney (Counsel Number Two). The same day, Counsel Number Two entered an appearance in the case, which stated "[d]efendant hereby requests a speedy trial in this pending case" and also "incorporate[d] by reference" a Motion for Speedy Trial. On January 17, 2017, two days before the scheduled trial date, appellant filed a motion to dismiss on the grounds that the trial date violated the 180-day trial deadline. The administrative judge found good cause to postpone the trial on January 19, 2017, citing short notice for appellant's *Hicks* motion and a lack of judges available to hear the motion and appellant's case. The administrative judge set a new trial date of March 16, 2017. On March 1, 2017, the judge presiding over appellant's motion recused himself because he was "familiar" with the victims, and the court postponed the hearing. On March 16, 2017, appellant requested a postponement because a key witness to the *Hicks* motion, Attorney One, was ill. The court rescheduled the motion hearing to April 10, 2017 and set a new trial date of June 6, 2017.

At the April motion hearing, the judge denied appellant's *Hicks* motion to dismiss,

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> the Motion for Speedy Trial, copies of which are on file with the Clerk of the Court and the Office of the State's Attorney, as if such Request and Motions were filed in full in this case."

We do not see how a reference to an improperly filed document can incorporate the substance of that improperly filed document.

finding good cause for the January 19 postponement. Specifically, the court found that Attorney One's erroneous July 12 entry of appearance was not filed in appellant's case and that the State was not a party to the clerical error. The court determined that the relevant date for *Hicks* purposes was the date Attorney One entered an appearance under the correct case number, which was September 16, 2016. Because the administrative judge found good cause for postponement on January 19, 2017, which was within the 180-day *Hicks* period which ran from September 16, 2016, the court denied appellant's motion.

On the scheduled trial date of June 6, 2017, appellant requested a postponement for additional time to prepare, and the court informed the parties that it would not grant the postponement except that there were no judges available. It therefore postponed the trial and "charged" the postponement to neither side.[3] The court set the trial for September 13, 2017. On the new trial date of September 13, 2017, there were no jurors to hear the case and the court postponed the trial to January 24, 2018.

Appellant filed two additional *pro se* motions to dismiss the case on January 24, 2018, arguing that the court abused its discretion in postponing the January 19, 2017 trial date past the 180-day *Hicks* deadline and that the State violated his constitutional right to a speedy trial. The circuit court denied both motions, noting again that the administrative judge found good cause to postpone the trial on January 19, 2017—short notice on the initial *Hicks* motion and lack of judges available to hear the case.

[3] The June 6, 2017 Postponement Order recorded good cause for postponement at the request of the defendant because the defendant "need[ed] more time" and also recorded that the judges and jury were unavailable. The order first "charged" the postponement to the defendant, then assigned it to neither side.

Appellant entered an *Alford* plea conditioned upon his ability to raise the *Hicks* and speedy trial arguments on appeal. As indicated above, the court accepted appellant's plea and sentenced him, and appellant now seeks review of the court's denial of his motions to dismiss.

II.

Appellant raises two issues before this Court. He argues first that the circuit court should have granted his motions to dismiss because the State violated Rule 4-271. Under Rule 4-271, unless the State shows good cause or the parties consent, the defendant's trial must commence within 180 days of the earlier of the first appearance of defense counsel or the appearance of the defendant in the circuit court.[4] Appellant argues that the 180-day period started on July 12, 2016 when Counsel Number One entered an appearance, *albeit* under an erroneous case number. He contends that he did not consent expressly to a trial date of January 19, 2017, which was beyond 180 days. Even if his counsel's agreement to the scheduling order constituted express consent to a trial date beyond 180 days, appellant argues that *he* never gave such consent.

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[4] Maryland Rule 4-271(a) provides, in pertinent part, as follows:

> "(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."

Alternatively, appellant argues that if the 180-day period began on September 16, 2016 when his counsel entered an appearance under the correct case number, the administrative judge abused her discretion on January 19, 2017 when she postponed the case to March 16, 2017, which was beyond the 180-day *Hicks* deadline. He contends that the administrative judge abused her discretion by failing to state reasons that a motions hearing could not be held the same day. Appellant argues that the court had at least three months' notice that there would not be judges available to preside over appellant's trial on January 19, 2017. Appellant concludes that even if there were good cause to postpone the trial, there was no finding of good cause to reschedule the trial date past the *Hicks* date.

Appellant argues also that the circuit court erred in failing to grant his motion to dismiss for violation of his constitutional right to a speedy trial. The Sixth Amendment to the United States Constitution guarantees an accused person the right to a speedy trial, and a violation of this right is assessed via "a balancing test, in which the conduct of both the prosecution and the defendant are weighed." *Barker v. Wingo*, 407 U.S. 514, 530 (1972). Appellant argues that the length of delay in bringing him to trial, the reason for the delay, his repeated assertions of his speedy trial right, and the prejudice resulting from the delay mandate a finding that the State violated his constitutional speedy trial right. Specifically, appellant argues that it took over two years to bring him to trial and that as a direct result of the State's inaction and the court's understaffing, appellant spent 369 additional days in detention. Appellant argues that he asserted his right to a speedy trial no fewer than ten times. He concludes that the State violated his constitutional right to a speedy trial and that the indictment should have been dismissed with prejudice.

Addressing appellant's argument that the circuit court should have granted his motion to dismiss for violation of Rule 4-271, the State argues that the relevant date from which the 180-day deadline ran was the September 16, 2016 entry of appearance under the correct case number. According to the State, the administrative judge acted within her discretion in finding good cause to postpone the case beyond the March 15, 2017 *Hicks* date. Further, the State argues that appellant cannot meet his burden of showing inordinate delay in the rescheduling of the case. Even if the 180-day deadline followed from Attorney One's July 12, 2016 entry of appearance, the State contends that defense counsel consented to a trial date beyond *Hicks*, rendering dismissal inappropriate. For those reasons, the State concludes that the circuit court did not err in denying appellant's motions to dismiss pursuant to Rule 4-271.

As to appellant's speedy trial argument, the State argues that the circuit court denied correctly appellant's constitutional speedy trial motion. The State concedes that the length of the delay was sufficient to trigger a speedy trial analysis. It argues, however, that of over twenty-seven months of pretrial delay, only approximately nine months weigh against the State. Additionally, the State contends that the delay only weighs against the State slightly, as there was no showing of any deliberate attempt to hamper appellant's defense, and appellant did not meaningfully assert his constitutional speedy trial right or make a credible showing of prejudice.

III.

We hold that the circuit court did not err in denying appellant's motion to dismiss

on the basis of the 180-day deadline in Rule 4-271. The Rule requires that the circuit court set a defendant's trial date no later than 180 days after the earlier of the first appearance of defense counsel or the first appearance of defendant in the circuit court. The date is known as a "*Hicks* deadline" after a seminal case in which the Court of Appeals held the deadline is mandatory absent "extraordinary cause." *Hicks*, 285 Md. at 318. The remedy for violation of the 180-day rule is dismissal. *Id.* at 317–18.

Appellant contends that his counsel first entered an appearance in his case on July 12, 2016 and that *Hicks* required the State to bring him to trial by January 8, 2017. Because Counsel Number One entered her appearance in the wrong case, the circuit court could not schedule the case. Appellant's counsel first entered appearance in the correct case on September 16, 2016. Under Rule 4-271, the 180-day deadline began when appellant's counsel first entered a correct appearance in the case, and his *Hicks* date was therefore March 15, 2017.

Rule 4-271 provides that a trial date may be changed upon an administrative judge's finding of good cause to postpone the trial. The requirement of "good cause" for a postponement of the trial date to a date beyond the 180-day deadline has two components: (1) there must be good cause for not commencing the trial on the assigned trial date; and (2) there must be good cause for the extent of the delay. *State v. Frazier*, 298 Md. 422, 448 (1984). The critical order by the administrative judge, for purposes of the dismissal sanction, is the order having the effect of extending the trial date beyond 180 days. *Id.* at 428. A postponement is in accordance with the Rule if it satisfies three conditions: first, a party or the court must request the postponement upon its own motion or initiative;

second, the moving party must show good cause; and third, the administrative judge or a designee must approve the extension of the trial date. *See Reed v. State*, 78 Md. App. 522, 534 (1989).

An administrative judge's postponement of a case beyond the 180-day deadline violates the Rule only if the defendant demonstrates that the change of trial date or the time period until a new trial represented a clear abuse of discretion. *Frazier*, 298 Md. at 462. The Rule does not require the administrative judge to make a specific finding that a postponement will take the case beyond the 180-day limit, or specific findings to support the good cause for the continuance. *Rosenbach v. State*, 314 Md. 473, 478–79 (1989). Once a case is postponed beyond the 180-day period based upon good cause, dismissal is not applicable, and the analysis falls under the constitutional speedy trial tests, not Maryland Rule 4-271. *Farinholt*, 299 Md. at 40.

The unavailability of a judge constitutes good cause for postponement of a trial past the 180-day *Hicks* deadline. *State v. Cook*, 322 Md. 93, 108–09 (1991); *State v. Beard*, 299 Md. 472, 479 (1984). In *State v. Frazier*, the Court rejected the defendant's argument that, as a matter of law, an overcrowded docket situation cannot justify a change of trial date or the length of the delay until the new trial date. 298 Md. at 461–62 (holding that there was no clear abuse of discretion in the administrative judges' findings of good cause for postponement). The Court of Appeals noted that the administrative judge "has an overall view of the court's business," and is therefore "ordinarily in a much better position than another judge of the trial court, or an appellate court, to make the judgment as to whether good cause for the postponement of a criminal case exists." *Id.* at 453–54.

Appellant argues that the administrative judge abused her discretion in postponing his trial past the *Hicks* date because the administrative judge did not set out specific articulable reasons as to why the court could not hear the motion the same day or why the court did not reschedule his trial in advance. Appellant's *Hicks* date was March 15, 2017. Thus, the critical postponement for a *Hicks* analysis was the administrative judge's January 19, 2017 postponement of appellant's trial.

The administrative judge made a good cause finding for postponement on January 19, 2017 based upon short notice on appellant's *Hicks* motion and a lack of judges available to preside over the motion and trial. The administrative judge had an overall view of the circuit court's dockets and available judicial personnel, and was in the best position to determine whether good cause for postponement existed. *See Frazier*, 298 Md. at 453–54. Further, a lack of judges available to preside over trial may constitute good cause for postponement. *See id.* at 461–62. We hold that the administrative judge's finding of good cause in the present case does not constitute a clear abuse of discretion.

As noted above, the requirement of a finding of good cause for postponement has two components. Where good cause to postpone a trial past the *Hicks* deadline exists, postponement cannot result in an "inordinate delay in bringing the case to trial." *Rosenbach*, 314 Md. at 479. The burden of demonstrating clear abuse of discretion is on the party challenging the discretionary ruling on the postponement. *Id.*

Appellant argues that even if the act of postponing was for good reason, the length of delay beyond the *Hicks* date was not. We find no "inordinate delay" in the circuit court's postponement and rescheduling of appellant's trial from January 19, 2017 to March 16,

2017. The postponement was fifty-six days in length, and the administrative judge rescheduled trial for one day after appellant's *Hicks* date. This falls well within the range of postponements that the Court of Appeals and this Court have found permissible. *See, e.g.*, *id*. at 477–81 (seventy-eight days); *Beard*, 299 Md. at 475–79 (fifty-nine to seventy-one days); *State v. Brookins*, 299 Md. 59, 60–63 (1984) (104 days); *Frazier*, 298 Md. at 435–37, 442–44 (ninety-nine days).

Appellant has not met his burden of demonstrating clear abuse of discretion in the administrative judge's finding of good cause for postponement or "inordinate delay" in the circuit court's rescheduling of his trial date.

We turn next to appellant's constitutional speedy trial argument. The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." Whether a defendant has been denied his constitutional right to a speedy trial must be determined *ad hoc* by applying a four-factor balancing test, which considers: (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 v. Wingo*, 407 U.S. 514, 530 (1972); *Epps v. State*, 276 Md. 96, 104, 106 (1975). None of the four factors is a necessary or sufficient condition for a finding of a deprivation of the right to a speedy trial; they are related factors and must be considered together with such other circumstances as may be relevant. *Barker*, 407 U.S. at 533; *Epps*, 276 Md. at 107.

A delay of sufficient length is required to trigger a speedy trial analysis, and the length of the delay is then considered as one of the factors within that analysis. *State v. Kanneh*, 403 Md. 678, 688 (2008). The length of the delay is the period between the filing

of the indictment to the trial date. *Divver v. State*, 356 Md. 379, 388–89 (1999).

In this case, over twenty-seven months passed between the date the State filed an indictment and the date appellant entered his *Alford* plea. This length of delay is of "constitutional dimension" and warrants analysis. *See Ratchford v. State*, 141 Md. App. 354, 359 (2001) (finding delay of eighteen months of "constitutional dimension"). But the length of delay alone does not result in a speedy trial violation, and we must consider it alongside the other *Barker* factors.

The second *Barker* factor is the reason for the delay. In analyzing the reasons for pre-trial delay, reviewing courts give different weights to different reasons for delay. The Supreme Court has held as follows:

> "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 ultimately responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay."

Barker, 407 U.S. at 531.

Here, approximately twelve of the twenty-seven months of pre-trial delay weigh against the State. The State was solely responsible for seventy-seven days of pre-trial delay when it held appellant without serving him with his indictment. These seventy-seven days weigh heavily against the State. Additionally, the circuit court postponed the trial date four times. Two of the postponements, contributing 189 days of delay, were solely due to court unavailability. Appellant also requested a postponement—which the court noted that it

would not grant except that there were no judges available for trial—resulting in ninety-nine days' delay. The 288 days of delay for court unavailability ultimately weigh against the State. *See id.* (noting that the "ultimate responsibility" for neutral reasons such as overcrowded courts "must rest with the government rather than with the defendant"). Delays arising from court unavailability do not weigh heavily against the State, however, as overcrowded courts are a "more neutral reason," and do not evince a "deliberate attempt to delay the trial in order to hamper the defense." *Hallowell v. State*, 235 Md. App. 484, 516 (2018) (quoting *Barker*, 407 U.S. at 531). Finally, appellant requested a postponement that resulted in an eighty-two-day delay, which we weigh against appellant. As only seventy-seven days of pre-trial delay are directly attributable to the State, and an additional 288 days weigh only minimally against the State, this factor does not favor dismissal.

The third *Barker* factor is whether and to what extent appellant asserted his speedy trial right. Although a defendant has "no duty to bring himself to trial," *Barker*, 407 U.S. at 527; *Epps*, 276 Md. at 118, his assertion of the right is "entitled to strong evidentiary weight in determining whether [he was] being deprived of the right." *Barker*, 407 U.S. at 531–32; *Epps*, 276 Md. at 118. This is because "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 begins to experience prejudice from that delay." *Glover,* 368 Md. at 228. Courts examining a defendant's assertion of his speedy trial right can weigh the "frequency and force of the objections as opposed to attaching significant weight to a purely *pro forma* objection." *Barker*, 407 U.S. at 529. But invoking *Hicks* is not the same as asserting one's speedy trial right. *See Marks v. State*, 84 Md. App. 269, 281 (1990)

(holding that appellant waived his speedy trial right where he only raised the *Hicks* issue at trial). "[F]ailure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *Barker*, 407 U.S. at 532.

Appellant argues that he asserted his right to a speedy trial at every opportunity. Appellant's attorneys both prayed for a speedy trial when they entered appearances in this case. While these filings may have put the State on notice that appellant was asserting his speedy trial right, they do not bear significant weight in the speedy trial analysis. *See id.* at 529; *Lloyd v. State*, 207 Md. App. 322, 332 (2012) (characterizing the defendant's assertion of his speedy trial right in an omnibus motion as "little more than the avoidance of waiver"). Aside from *pro forma* language in his counsel's early filings, appellant did not mention his constitutional speedy trial right until he filed a *pro se* motion to dismiss five days before he entered the plea that resolved his case. Appellant did object to the postponement of the first trial date and filed a *Hicks* motion in January 2017, but that motion did not include a constitutional speedy trial claim. Thus, the third *Barker* factor weighs against dismissal of appellant's case.

The fourth and "most important" *Barker* factor is prejudice to the defendant. *Peters v. State*, 224 Md. App. 306, 364 (2015). A determination of prejudice must consider the three interests of defendants that the speedy trial right was designed to protect: (1) to prevent oppressive pre-trial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will be impaired. *Barker*, 407 U.S. at 532–33; *Epps*, 276 Md. at 106–07. The first two of the factors are "generally afforded only slight weight," *Hallowell*, 235 Md. App. at 518, and the most important factor in

establishing prejudice is the inability to prepare one's defense. *Wilson v. State*, 148 Md. App. 601, 639 (2002).

Appellant was incarcerated for approximately twenty months before his trial, and he asserted in his *pro se* motion to dismiss on constitutional speedy trial grounds that he suffers from anxiety regarding his case. But a "bald allegation" of anxiety "has little significance," *Howell v. State*, 87 Md. App. 57, 86 (1991), and these factors weigh only slightly in appellant's showing of prejudice. Appellant has pointed to no witnesses or physical evidence lost because of the delay. In the absence of any showing of prejudice, this factor does not weigh in favor of dismissal. *See Wilson*, 148 Md. App. at 639.

While the twenty-seven months of pretrial delay in appellant's case warrant constitutional analysis, only around twelve months weigh against the State, and all but seventy-seven days weigh lightly. Most significantly, however, appellant failed show any prejudice. The circuit court did not abuse its discretion or err in denying appellant's motion to dismiss for violation of his constitutional right to a speedy trial.

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