Circuit Court for Baltimore County
CC No. 03-K-16-02703

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2577

September Term, 2016

DAAHME M. FORSTER

v.

STATE OF MARYLAND

Woodward C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned)

JJ.

PER CURIAM

Filed: February 7, 2018

*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, Daahme Forster, was charged with robbery and related offenses occurring on May 8, 2016. On January 3, 2017, and after a series of trial postponements, appellant moved to dismiss on speedy trial grounds. The court denied the motion and appellant pled guilty to robbery with a dangerous and deadly weapon, and use of a firearm in the commission of a crime of violence. Appellant was sentenced to a total of twenty years of incarceration, with all but fifteen years suspended, five years of which was to be served without the possibility of parole. He appeals the court's denial of his motion to dismiss. We affirm.

BACKGROUND

Appellant appeared in the Circuit Court for Baltimore County on June 6, 2016 and was arraigned on robbery with a deadly weapon and related charges. On October 26, 2016 the parties appeared before the court for the first trial date, whereupon the State requested a postponement because analysis of DNA samples found on a gun located in appellant's apartment was still pending. The postponement was granted, and the court set a new trial date of November 30, 2016, which was before the 180 day *Hicks*[1] date. On November 30, 2016, the parties reconvened for trial. The State again asked for a postponement, because the DNA analysis had still not yet been completed. The State requested the court to find good cause to set the trial beyond 180 days, and the court did so over appellant's objection. The court then reset the trial to January 3, 2017. On January 3, 2017 the parties appeared

[1] The *Hicks* date refers to *State v. Hicks*, 285 Md. 310, 318 (1979), which held that the provisions of the speedy trial statute are mandatory, and that the appropriate sanction for violations of the statute is dismissal of the criminal charges.

before the court and appellant made a motion to dismiss for a violation of Maryland Rule 4-271. After the court denied his motion to dismiss, appellant pled guilty to robbing a pizza delivery man and pistol whipping him about the head.

DISCUSSION

Appellant argues that the "lower court erred in denying [his] motion to dismiss on *Hicks* grounds." He maintains that the circuit court abused its discretion when it found "good cause for postponing the case past the Hicks date, and that there was not good cause, because the only reason why the DNA evidence was unavailable for the scheduled trial date of November 30, 2016 is that the State failed to send the evidence out for DNA testing until October 24, 2016."

Maryland Criminal Procedure Article § 6-103(a)(2) provides that a criminal trial be held no "later than 180 days after the earlier of" the appearance of counsel, or the first appearance of the defendant before the circuit court. Changes to the trial date must be made by the county administrative judge or designee, and only for good cause shown. § 6-103(b). Maryland Rule 4-721 provides the same. The Legislature intended "good cause be defined by an administrative judge upon review of the particular circumstances of each case." *State v. Toney*, 315 Md. 122, 133 (1989). In finding good cause, the administrative judge need not make a determination that the moving party exercised "reasonable diligence" in avoiding the postponement. *Id.* An administrative judge may find "awaiting the results of DNA testing" amounts to good cause. *Peters v. State*, 224 Md. App. 306, 358, *cert. denied*, 445 Md. 127 (2015). "The determination that there was or was not good cause for the postponement of a criminal trial has traditionally been viewed as a discretionary

matter, rarely subject to reversal upon review." *Frazier*, 298 Md. 422, 451 (1984). We review the court's finding of good cause for abuse of discretion, considering "what is before the administrative judge or his designee at the time the postponement is ordered," and not in light of alleged facts discovered after good cause is found. *Morgan v. State*, 299 Md. 480, 488 (1984).

Here, based on appellant's June 6, 2016 arraignment date, the *Hicks* date was December 3, 2016. On November 30, 2016, the State requested a postponement because DNA found on "several articles of clothing and a handgun" found in appellant's home had been sent out of State for analysis, but that analysis had not yet been completed. The State indicated that they expected the results from the analysis to be returned by December 9, 2016, and sought to reset the trial date to whatever date defense counsel was available after that date. Counsel for appellant objected and argued that the "DNA could have been done much earlier," and therefore there was "no legitimate good cause." The administrative judge granted this postponement for the State, finding "good cause based on the scientific situation." The case was then reset to January 3, 2017, which was one month past the *Hicks* date.

Appellant now argues that the court abused its discretion in finding good cause because "the only reason why the DNA evidence was unavailable for the scheduled trial date of November 30, 2016 is that the State failed to send the evidence out for DNA testing until October 24, 2016." He argues that the State's lack of diligence did not justify the postponement, and therefore, the court abused its discretion in finding good cause and postponing the trial date. The State argues that this is a misrepresentation of facts. The

record, however, reveals that appellant did not argue this detail below. Therefore, we need not consider the veracity of this claim, as it was not before the administrative judge when he made his decision to find good cause. Nevertheless, even had he argued that the State did not send the evidence out for DNA testing until right before the first scheduled trial date, the administrative judge need not have made a determination that the moving party exercised "reasonable diligence." The court did hear appellant's argument that the "DNA could have been done much earlier," and still found good cause to postpone the trial beyond 180 days. There is nothing in the record that indicates that the court abused its discretion in finding good cause, nor does a postponement to await DNA analysis lack good cause as a matter of law.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.