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In 1979, the Court of Appeals of Maryland held the application of Maryland Rule 746, now Maryland Rule 4-271, is mandatory and that the sanction for failure to comply with this 180-day rule is dismissal of the charges with prejudice.[1] Since that time, there has been a plethora of litigation concerning the interpretation of the Rule and the applicability of the dismissal sanction.[2]

Maryland Rule 4-271 requires that, in circuit court, a trial date must be set within thirty days after either the appearance of counsel or the first appearance of the defendant before the circuit court, whichever occurs first.[3] This trial date shall not be later than 180 days after the earlier of these events.[4] If a postponement causes the trial to be held after 180 days has passed, the postponement is in accordance with the rule only if a party or the court *sua sponte* requests the postponement, good cause is shown by the moving party, and the county administrative judge or his or her designee approves the postponement of the trial.[5]

The purpose of Rule 4-271 is to promote orderly procedure by setting a time limit for the State to prepare for trial.[6] The Rule seeks to minimize the societal effects of excessive delays in the criminal justice system.[7] It does not implement the accused's sixth amendment right to a speedy trial.[8]

Sixth amendment case analysis differs significantly from the analysis applicable to Rule 4-271. The Maryland Rule is analyzed under principles of statutory construction.[9] Sixth amendment speedy trial cases are analyzed under the four factor balancing test announced by the United States Supreme Court in *Barker v. Wingo*.[10] These four factors are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of the right; and (4) prejudice to the defendant because of the delay.[11]

Once a case is properly postponed beyond the Rule's 180-day limit, a defendant's right to a speedy trial is protected only by the sixth amendment.[12] Even if a case is properly postponed under Rule 4-271, however, a prosecutor must remain diligent in bringing a defendant to trial at the earliest possible date. In *Reed v. State*,[13] for example, the Court of Special Appeals of Maryland held that while a postponement beyond the 180-day period had been properly granted, and thus the dismissal sanction under the Rule was not appropriate, a delay of more than thirteen months between the defendant's arrest and trial violated his constitutional right to a speedy trial. His conviction was reversed, therefore, even though Rule 4-271 had not been violated.

Running of the 180-day Clock

The 180-day period begins at the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court.[14] The 180-day period, however, does not apply to cases brought in the district court.[15] Thus, when a defendant is first charged in the district court but later indicted in the circuit court, the time spent in the district court is not included in the 180-day period.[16] Moreover, if a case is transferred from the district court because of a demand for jury trial, and the appearance of counsel was entered in the district court, the 180-day period begins on the date the case was docketed in the circuit court.[17]

Although the Rule seems to be clear regarding when the 180-day period begins, there have been a number of cases that have litigated this issue. In *McCallum v. State*,[18] the defendant was convicted of various violations of the Transportation Article of the Maryland Code. A preliminary hearing was scheduled for March 28, 1988. At that time, the defendant was serving a six month sentence in the Anne Arundel County Detention Center and, for reasons not explained, the defendant was not transported to the hearing.[19] The hearing was postponed and no further action was taken until counsel entered his appearance on May 6, 1988.[20] If the 180-day period began on the date the preliminary hearing was scheduled, Rule 4-271 was violated and the charges would be dismissed.[21] The court of special appeals held to the contrary. The 180-day period begins when counsel enters an appearance or the defendant first appears before the circuit court. In this case, because no preliminary hearing was ever conducted, counsel's appearance started the 180-day clock.[22] The court stated that it was irrelevant that the State, by its negligence, may have caused the preliminary hearing to be postponed.[23]

In *Grandison v. State*,[24] the court of appeals held that when a case is removed at the defendant's request, the 180-day period begins to run anew in the receiving court from the time the case is received.[25] In this case, the defendant requested that the case be removed to the Circuit Court for Somerset County less than one month before the 180-day period expired in the Circuit Court for Baltimore County.[26] The court of appeals noted that the major safeguard of Rule 4-271 is that a case may only be postponed by an administrative judge or his or her designee, as such persons have an overall view of the court's business.[27] The court concluded that the Rule was not designed to cover situations of removal because the administrative judge of the court from which the case was removed would be unable to fulfill the functions contemplated by the Rule.[28] Moreover, to require the receiving court to adhere to the trial schedule set by the forwarding court would impose an unreasonable and often impossible task upon the administrative judge of the receiving court.[29] The court held, therefore, that when a case is removed at the defendant's request, the trial date set in the original court in accordance with Rule 4-271 is no longer relevant and the 180-day period begins anew in the receiving court.[30] Additionally, the court stated in dictum that the same principle applies if removal is granted at the request of the

State.[31] If it appears, however, that the State's request was for the purpose of, or had the necessary effect of, circumventing the Rule, the original trial date will control for purposes of Rule 4-271.[32]

The *Grandison* holding is consistent with the ruling of the court of appeals in *Curly v. State*.[33] In that case, the court held that when a criminal case in the circuit court is *nol prossed* and the State later refiles the same charges, the 180-day period begins with the arraignment or first appearance of counsel in the second prosecution.[34] If it is shown, however, that the *nol pros* had the purpose or effect of circumventing the Rule, the 180-day period begins with the arraignment or first appearance of counsel in the first prosecution.[35]

The Role of the Administrative Judge

Maryland courts have consistently held that every postponement must be granted by an administrative judge or his or her designee.[36] The intervention of the administrative judge is critical because

> 'it is the administrative judge who has an overall view of the court's business, who is responsible "for the administration of the court," who assigns trial judges, who "supervise[s] the assignment of actions for trial," who supervises the court personnel involved in the assignment of cases, and who receives reports from such personnel,' and '[c]onsequently the administrative judge is 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.'[37]

Accordingly, the court of appeals has held that any procedure by which all trial judges are purportedly designees of the administrative judge, and thus authorized to grant postponements, would not comply with Rule 4-271.[38] Similarly, the court has held that a trial judge may not grant a postponement beyond the 180-day limit, subject to the approval of the administrative judge, when such approval takes place after the expiration date.[39]

More recently, the court of appeals has held that the circuit court's assignment officer may not grant a postponement that places the trial date beyond the 180-day period.[40] The court stated that Rule 4-271 does not "contemplate or permit the exercise of postponement authority by anyone other than one with the authority of an administrative judge."[41]

Similarly, in *State v. Robertson*,[42] the court of special appeals held that the requirements of Rule 4-271 are not satisfied when the trial court orders a case "out of assignment." In that case, the defendant failed to appear for the scheduled trial date because the District of Columbia was holding him on other charges, and refused to honor the county's writ of *habeas corpus ad prosequendum*.[43] The court, unable to proceed with the trial, ordered the clerk to "show [the case] out of assignment."[44] Six days before the expiration of the 180-day period, the State requested, in writing, that the clerk set a new date for motions and trial.[45] The assignment office set the trial date for three months after the expiration of the 180-day period.[46] The State never sought a postponement by the administrative judge or his or her designee during the 180-day period.[47] The trial court dismissed the charges because no judge approved the postponement beyond the 180-day period,[48] and the court of special appeals affirmed because of the State's failure to comply with the Rule's requirements.[49]

Moreover, the court of special appeals recently held that a designee of an administrative judge may not further designate another judge as having the authority to grant postponements.[50] The court noted that the purpose of requiring an administrative judge or his or her designee to make the good cause determination is to ensure that the decision is made by the person in the best position to do so.[51] The court, therefore, concluded that in light of this purpose and the clear and unambiguous language of Rule 4-271, the Rule contemplates but one designation for purposes of a change in the trial date.[52]

"[P]arty requesting a postponement ... must show good cause."

The Good Cause Requirement

A fair reading of Rule 4-271 and the cases dictate that the party requesting a postponement beyond the 180-day period, whether the party is the court, the State, or the defendant, must show good cause.[53] The court of appeals has ruled, however, that an administrative judge's decision to postpone a case for good cause need not specifically acknowledge that the postponement will carry the case beyond the 180-day period.[54] Moreover, once a case is properly postponed for good cause, the administrative judge need not personally reset or cause the case to be reset for a particular date but may delegate this responsibility to the assignment office.[55] It must be remembered, however, that once a postponement has been granted for good cause, the administrative judge and the prosecutor are administratively responsible for ensuring that the postponement is not extended in violation of the sixth amendment.[56]

In the past, Maryland courts have identified a number of situations that qualify as good cause, many of which involve pretrial preparations or motions.[57] For example, a delay in receiving an evaluation concerning the defendant's mental health[58] or a determination that the defendant is incompetent to stand trial may constitute good cause.[59] Additionally, good cause may be found when a motion for severance is granted when only one defendant can be tried on schedule and when time is taken up on a pretrial suppression motion.[60] Moreover, when the parties are involved in bona fide plea bargaining, or if the defendant fails to comply with a valid discovery request, good cause may exist for a postponement on behalf of the State.[61] Good cause may also exist if new evidence is discovered.[62] Furthermore, although a defendant's need to secure counsel may constitute good cause, a defendant's last minute request to change counsel, or a defendant's claim that appointed counsel was unprepared, does not constitute good cause.[63]

Maryland courts have also ruled that an excusable failure to secure the attendance of a key witness may constitute good cause.[64] Whether such a failure constitutes good cause is analyzed under four criteria.[65] These criteria are: (1) the reasonable expectation of securing the witness within a reasonable time; (2) the competency and materiality of the proffered witness; (3) the ability to try the case fairly without the witness; and (4) the exercise of reasonable diligence by the party requesting the postponement to secure the witness prior to the trial date.[66]

Furthermore, the court of special appeals has held that when a defendant backs out of a plea agreement on the day of trial and demands a jury trial, good cause exists for a postponement on behalf of the State to summon witnesses and to otherwise prepare for a trial on the merits.[67] The court has also decided that the denial of a request for a postponement by a defendant, whose mother was in a coma and was not expected to live, was not an abuse of discretion.[68] Thus, a defendant's need to visit a sick relative may not constitute good cause to postpone a trial.[69]

The court of appeals has held that non-chronic court congestion may con-

stitute good cause but chronic court congestion is inexcusable.[70] It has been suggested that the State and the hearing judge present as much evidence as possible with regard to the request for a postponement, including live witnesses and court records, to show the efforts being made by the court and the State's Attorney's Office to comply with the requirements of Rule 4-271.[71]

Similarly, in *State v. Toney*,[72] the court of appeals held that the unavailability of a prosecutor may constitute good cause to warrant postponement under the Speedy Trial Rule when the prosecutor's scheduling conflicts are caused by unusual situations.[73] The defendant was charged with first and second degree murder and related weapons violations.[74] The case was postponed several times for various reasons, including the unavailability of a courtroom, the late receipt of evidence, and the unavailability of a judge.[75] The fourth and critical postponement was granted because the prosecutor was trying an unrelated murder case.[76] The prosecutor argued that he had developed a rapport with a key witness and such rapport was not easily transferable to another prosecutor.[77]

The administrative judge found good cause for the postponement.[78] When the case was called for trial, and a different attorney represented the State, the defendant moved to dismiss the charges on the ground that the good cause requirement of Rule 4-271 had not been satisfied.[79] The defendant's motion was denied.[80] The appellate court noted that the determination as to what constitutes good cause is a matter within the discretion of the administrative judge,[81] and his determination of good cause will not be reversed absent a showing of a clear abuse of discretion or a lack of good cause as a matter of law.[82] The court found no evidence that prosecutors are habitually unavailable due to trial conflicts and thus determined that the administrative judge could have properly concluded that good cause existed for a postponement.[83]

In *Wright v. State*,[84] the defendant's trial date was inadvertently set for a date in violation of Rule 4-271.[85] The prosecutor discovered the violation three days before the 180-day period expired and requested that the administrative judge reset the trial for the 180th day.[86] The defendant's counsel objected, stating that the defendant was not present and had not been served to appear.[87] The administrative judge moved the trial date forward and placed the burden of notifying the defendant on his counsel and his bondsman.[88] The defendant failed to appear on the new trial date and the administrative judge found good cause to postpone the trial date to the original trial date outside of the 180-day period.[89] On that trial date, the defendant moved to dismiss for failure to comply with Rule 4-271.[90] The trial judge denied the motion.[91] The appellate court noted that the State had made a good faith effort to set the trial in accordance with Rule 4-271 and to notify the defendant of the change in the trial date.[92] The court determined that appellant's failure to appear was not caused by any bad faith on the part of the State.[93] Accordingly, the court concluded that there was good cause for postponement.[94]

"Ordinarily, the appropriate sanction for a violation of the . . . Rule is dismissal with prejudice."

Sanction for Noncompliance

Ordinarily, the appropriate sanction for a violation of the Speedy Trial Rule is dismissal with prejudice.[95] The court of appeals has consistently held that the postponement that carries the case beyond the 180-day period is the critical one.[96] The dismissal sanction is not appropriate, however, if the violation of Rule 4-271 is a failure to set the trial date within thirty days of the earlier of either the appearance of counsel or the first appearance of the defendant before the circuit court.[97] Additionally, dismissal is inappropriate when the defendant seeks or expressly consents to a trial date in violation of Rule 4-271.[98]

A defendant's motion for an extension of time to file an election of a court or jury trial, for example, was held to amount to seeking or expressly consenting to a trial date in violation of the Rule.[99] Even if defense counsel's consent to a trial date beyond the 180-day period is inadvertent, the dismissal sanction is not warranted.[100] Moreover, even though a defendant's request or acquiescence in a postponement is not automatically considered seeking or consenting to a postponement in violation of the Rule, such action in the latter portion of the 180-day period may be considered consent.[101] A defendant's insistence on his sixth amendment right to counsel on the day of trial, however, does not constitute consent.[102] However, once a defendant agrees to a plea bargain, there is a de facto "waiver" of the Rule's prompt trial provisions.[103]

In *State v. Brown*,[104] the court of appeals reaffirmed its previous holding that when a defendant expressly and unqualifiedly consents to a trial date in violation of Rule 4-271, dismissal is an inappropriate sanction. In *Brown*, the defendant filed a document purporting to "waive" the requirements of the Rule.[105] The court noted that the Rule's requirements may not be waived because the Rule does not codify a defendant's right to a speedy trial; rather, it is designed to further society's interest in the prompt disposition of criminal trials.[106] The Rule's requirements, therefore, are binding on both the prosecution and the defense.[107] The court concluded, however, that when a defendant seeks or expressly consents to a date in violation of the Rule, as the defendant did in this case, dismissal is not appropriate because the defendant would gain an advantage by his own violation of the Rule.[108]

Moreover, in *Treece v. State*,[109] the court of special appeals held that when defense counsel enters an insanity plea over the objection of the defendant, and the critical postponement is premised on a joint request for mental examination, the defendant has sought or expressly consented to a trial date in violation of Rule 4-271. The court concluded that, because the decision of defense counsel to enter an insanity plea was amply supported, the subsequent postponement to conduct psychiatric examinations was not in violation of the Rule.[110]

Review of Violations of Rule 4-271

Denial of a motion to dismiss for a violation of Rule 4-271 may be appealed only after a final judgment.[111] When a motion to dismiss is granted, however, the State may appeal immediately.[112] A defendant need not raise the denial of the motion at trial in order to preserve it for review if he has filed a motion to dismiss for a violation of Rule 4-271 and a hearing has been held.[113] The court of appeals has held that when a defendant diligently pursues a prompt trial, there can be no waiver of the issue merely because the hearing judge, who was also the trial judge, failed to put his denial of the motion on the record.[114] Because a trial judge has a duty to rule on all pretrial motions, when the matter proceeds to trial it can be concluded that the judge denied the motion and the issue is preserved for review.[115]

The scope of appellate review is narrow. Rule 4-271 places wide discretion in the hands of the administrative judge in determining whether good cause exists to postpone a case.[116] Therefore, an appellate court, as well as a trial judge, may not reverse an administrative judge's determination of good cause absent a demonstration by the defendant of a clear abuse of discretion or a lack of good cause as a matter of law.[117]

Conclusion

In dealing with Rule 4-271, it is important to remember that its purpose is to promote orderly trial procedure.[118] In keeping with this purpose, it is reasonable to conclude that the court will continue to rigidly adhere to the requirement that only an administrative judge or his or her designee may grant a postponement. Additionally, the court is likely to continue its flexible approach when determining what constitutes good cause and whether a defendant has sought or expressly consented to a trial date in violation of the Rule.

Endnotes

[1]*State v. Hicks*, 285 Md. 310, 403 A.2d 356 (1979). Formerly, Md. Rule 746 provided that a trial date be set not later than 120 days after the appearance of or waiver of counsel or after the appearance of the defendant before the circuit court. Md. Rule 746 was amended on an emergency basis on November 16, 1979, to change the time period specified by the rule from 120 to 180 days. Casenote, *State v. Hicks*, 9 U. Balt. L. Rev. 473 n.4 (1980) (hereinafter Casenote).

[2]*See generally* Casenote, *supra* note 1; Norton, *Maryland's Prompt Criminal Trial Provisions, Hicks and Beyond*, 14 U. Balt. L. Rev. 447 (1985) (hereinafter *Norton*); and cases cited *infra*.

[3]Md. Rule 4-271 (a).

[4]*Id.*

[5]*Id.*; *see also Reed v. State*, 78 Md. App. 522, 534, 554 A.2d 420, 426 (1989).

[6]Casenote, *supra* note 1, at 477.

[7]*Hicks*, 285 Md. at 316, 403 A.2d at 359.

[8]Casenote, *supra* note 1, at 479.

[9]*Id.* at 481.

[10]407 U.S. 514 (1972); *see also Lee v. State*, 61 Md. App. 169, 485 A.2d 1014 (1985).

[11]407 U.S. at 530.

[12]*Norton*, *supra* note 2, at 455; *see also Reed v. State*, 78 Md. App. 522, 554 A.2d 420 (1989)

[13]78 Md. App. 522, 554 A.2d 420.

[14]Md. Rule 4-271(a).

[15]*Id.*; *see also* Norton, *supra* note 2, at 455.

[16]Norton, *supra* note 2, at 455.

[17]Md. Rule 4-271.

[18]81 Md. App. 403, 567 A.2d 967 (1990). The charges included driving on a suspended license, driving an unregistered vehicle, unauthorized use of a registration card and license plate, and failure to display a registration card and license to a police officer on request. *Id.* at 406-07, 567 A.2d at 968-69.

[19]*Id.* at 408-09, 567 A.2d at 969-70.

[20]*Id.* at 409, 567 A.2d at 970.

[21]*Id.* at 408, 567 A.2d at 969.

[22]*Id.* at 409, 567 A.2d at 970.

[23]*Id.* at 409-10, 567 A.2d at 970.

[24]305 Md. 685, 506 A.2d 580 (1986).

[25]*Id.* at 716, 506 A.2d at 595.

[26]*Id.* at 715, 506 A.2d at 595.

[27]*Id.*

[28]*Id.* at 716, 506 A.2d at 595.

[29]*Id.*

[30]*Id.*

[31]*Id.*

[32]*Id.* at 716-17, 506 A.2d at 596.

[33]299 Md. 449, 474 A.2d 502 (1984); *see* Norton, *supra* note 2, at 458.

[34]*Id.*

[35]*Id.*

[36]*See Capers v. State*, 317 Md. 513, 520, 565 A.2d 331, 334 (1989); *State v. Brown*, 307 Md. 651, 657, 516 A.2d 965, 968 (1986); Norton, *supra* note 2, at 468.

[37]*State v. Toney*, 315 Md. 122, 129-30, 553 A.2d 696, 700 (1989) (quoting *State v. Frazier*, 298 Md. 422, 453-54, 470 A.2d 1269, 1285 (1984).

[38]Norton, *supra* note 2, at 468.

[39]*Id.* at 469.

[40]*Capers*, 317 Md. at 520-21, 565 A.2d at 334 .

[41]*Id.*

[42]72 Md. App. 342, 349-50, 529 A.2d 847, 851 (1987).

[43]*Id.* at 344, 529 A.2d at 848.

[44]*Id.*

[45]*Id.* at 344-45, 529 A.2d at 848.

[46]*Id.* at 345, 529 A.2d at 849.

[47]*Id.*

[48]*Id.* at 349, 529 A.2d at 851.

[49]*Id.* at 351, 529 A.2d at 852.

[50]*Ingram v. State*, 80 Md. App. 547, 556, 565 A.2d 348, 352 (1982).

[51]*Id.*

[52]*Id.*

[53]Norton, *supra* note 2, at 475.

[54]*Rosenbach v. State*, 314 Md. 473, 478, 551 A.2d 460, 462 (1989).

[55]*Id.* at 479, 551 A.2d at 462-63.

[56]Norton, *supra* note 2, at 467-68.

[57]*Id.* at 463.

[58]*Id.*

[59]*Id.* at 464.

[60]*Id.* at 463.

[61]*Id.* at 464.

[62]*Id.* at 465.

[63]*Id.* at 463.

[64]*Id.* at 464.

[65]*Id.*

[66]*Id.*

[67]*Id.* at 463.

[68]*Brown v. State*, 50 Md. App. 651, 654, 441 A.2d 354, 356 (1982).

[69]*Id.*; *see also* Norton, *supra* note 2, at 463.

[70]Norton, *supra* note 2, at 465-66.

[71]*Id.* at 466 (citing Loker, *The Effect of State v. Hicks on the Scheduling and Postponement of Trials Pursuant to Maryland Rule 746*, 2 Maryland Prosecutor 29, 32 (1979)).

[72]315 Md. 122, 553 A.2d 696 (1989).

[73]*Id.* at 135, 553 A.2d at 703.

[74]*Id.* at 124, 553 A.2d at 697.

[75]*Id.* at 124-25, 553 A.2d 697-98.

[76]*Id.* at 125, 553 A.2d at 698.

[77]*Id.* at 126, 553 A.2d at 698.

[78]*Id.*

[79]*Id.*

[80]*Id.*

[81]*Id.* at 133, 553 A.2d at 702.

[82]*Id.* at 129, 553 A.2d at 700.

[83]*Id.* at 135, 553 A.2d at 703.

[84]68 Md. App. 637, 515 A.2d 477 (1986).

[85]*Id.* at 639-40, 515 A.2d at 479.

[86]*Id.*

[87]*Id.* at 640, 515 A.2d at 479.

[88]*Id.*

[89]*Id.*

[90]*Id.* at 641, 515 A.2d at 480.

[91]*Id.* at 642, 515 A.2d at 480.

[92]*Id.* at 649-50, 515 A.2d at 484.

[93]*Id.* at 649, 515 A.2d at 484.

[94]*Id.*

[95]*State v. Hicks*, 285 Md. 310, 403 A.2d 356 (1979).

[96]*Rosenbach*, 314 Md. 477, 551 A.2d at 462 (citing *State v. Harris*, 299 Md. 63, 66-67, 472 A.2d 467, 469 (1984); *State v. Frazier*, 298 Md.422, 428, 470 A.2d 1269, 1272 (1984)).

[97]Norton, *supra* note 2, at 450.

[98]*Id.*

[99]*Id.* at 461.

[100]*Id.* at 471.

[101]*Id.* at 472.

[102]*Id.* at 473-74.

[103]*Id.* at 474.

[104]307 Md. 651, 516 A.2d 965 (1986).

[105]*Id.* at 653-54, 516 A.2d at 966.

[106]*Id.* at 657, 516 A.2d at 968.

[107]*Id.*

[108]*Id.* at 658, 516 A.2d at 968-69.

[109]72 Md. App. 644, 532 A.2d 175 (1987).

[110]*Id.* at 655, 532 A.2d at 180.

[111]Norton, *supra* note 2, at 478.

[112]*Id.*

[113]*Capers*, 317 Md. at 519, 565 A.2d at 334 .

[114]*Id.*

[115]*Id.*

[116]*Toney*, 315 Md. at 133, 553 A.2d at 702.

[117]*Id.* at 131, 553 A.2d at 701.

[118]*See supra* notes 6-8 and accompanying text.

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