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Recent Case Law on Maryland’s Speedy Trial Rule

by Mary Comeau

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. Since that time, there has been a plethora of litigation concerning the interpretation of the Rule and the applicability of the dismissal sanction.

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. This trial date shall not be later than 180 days after the earlier of these events. 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.

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

Sixth amendment case analysis differs significantly from the analysis applicable to Rule 4-271. The Maryland Rule is analyzed under principles of statutory construction. Sixth amendment speedy trial cases are analyzed under the four factor balancing test announced by the United States Supreme Court in *Barker v. Wingo*. 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.

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.

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*, 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. However, does not apply to cases brought in the district court. 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. 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.

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*, the defendant was charged with 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. The hearing was postponed and no further action was taken until counsel entered his appearance on May 6, 1988. 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. 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. The court stated that it was irrelevant that the State, by its negligence, may have caused the preliminary hearing to be postponed.

In *Grandison v. State*, 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. 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. 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. 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. 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. 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. Additionally, the court stated in dictum that the same principle applies if removal is granted at the request of the
Accordingly, the court of appeals has held that when such approval takes place after the expiration date, the trial date will not be set. If it is shown, however, that the 

The Grandison holding is consistent with the ruling of the court of appeals in Curly v. State. In that case, the court held that when a criminal case in the circuit court is not prosed 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. If it is shown, however, that the not prosed 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.

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. 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 supervises the court personnel involved in the assignment of cases, and who receives reports from such personnel, and consequently 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. 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.

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.

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. 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.”

Similarly, in State v. Robertson, 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. The court, unable to proceed with the trial, ordered the clerk to “show [the case] out of assignment.” 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. The assignment office set the trial date for three months after the expiration of the 180-day period. The court noted that the purpose of requiring an administrative judge or his or her designee during the 180-day period, the trial court dismissed the charges because no judge approved the postponement beyond the 180-day period, and the court of special appeals affirmed because of the State's failure to comply with the Rule's requirements.

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. 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. 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.

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. 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. 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. 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.

In the past, Maryland courts have identified a number of situations that qualify as good cause, many of which involve pretrial preparations or motions. For example, a delay in receiving an evaluation concerning the defendant's mental health or a determination that the defendant is incompetent to stand trial may constitute good cause. 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. 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. Good cause may also exist if new evidence is discovered.

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.

Maryland courts have also ruled that an excusable failure to secure the attendance of a key witness may constitute good cause. Whether such a failure constitutes good cause is analyzed under four criteria. 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.

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 to otherwise prepare for a trial on the merits. 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.

Thus, a defendant's need to visit a sick relative may not constitute good cause to postpone a trial.

The court of appeals has held that non-chronic court congestion may con-
stitute good cause but chronic court con-
gestion is inexcusable. It has been sug-
gested that the State and the hearing
judge present as much evidence as pos-
sible 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 re-
quirements of Rule 4-271.

Similarly, in State v. Toney, 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 un-
usual situations. The defendant was
charged with first and second degree
murder and related weapons violations.
The case was postponed several
times for various reasons, including the
unavailability of a courtroom, the late
receipt of evidence, and the unavali-
availability of a judge. The fourth and
critical postponement was granted because the
prosecutor was trying an unrelated mur-
der case. The prosecutor argued that he had developed a rapport with a key
witness and such rapport was not easily
transferable to another prosecutor.

The administrative judge found good
cause for the postponement. When the
case was called for trial, and a different
attorney represented the State, the defen-
dant moved to dismiss the charges on the
ground that the good cause requirement
of Rule 4-271 had not been satisfied. The
defendant's motion was denied. The
appellate court noted that the deter-
mination as to what constitutes good
cause is a matter within the discretion of
the administrative judge, and his deter-
mination of good cause will not be re-
versed absent a showing of a clear abuse
discretion or a lack of good cause as a
matter of law. The court found no evi-
dence that prosecutors are habitually un-
available due to trial conflicts and thus
determined that the administrative judge
could have properly concluded that
good cause existed for a postponed
motion.

In Wright v. State, the defendant's
trial date was inadvertently set for a date
in violation of Rule 4-271. The prosecu-
tor discovered the violation three
days before the 180-day period expired and
requested that the administrative judge
reset the trial for the 180th day. The
defendant's counsel objected, stating
that the defendant was not present and
had not been served to appear. The
administrative judge moved the trial date
forward and placed the burden of notify-
ing the defendant on his counsel and his
bondsman. The defendant failed to ap-
pear on the new trial date and the admin-
istrative judge ruled good cause to
postpone the trial date to the original trial
date outside of the 180-day period. On
that trial date, the defendant moved to
dismiss for failure to comply with Rule
4-271. The trial judge denied the mo-
tion. 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. The court determined
that appellant's failure to appear was not
cause by any bad faith on the part of the
State. Accordingly, the court con-
cluded that there was good cause for post-
ponement.

In State v. Brown, the court of ap-
peals reaffirmed its previous holding that
when a defendant expressly and unqual-
ifiedly consents to a trial date in violation
of Rule 4-271, dismissal is an inapropri-
ate sanction. In Brown, the defendant
filed a document purporting to “waive”
the requirements of the Rule. 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 disposi-
tion of criminal trials. The Rule’s re-
quirement that the defendant consents to
both the prosecution and the defense.

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, dis-
missal is not appropriate because the defendant would gain an advantage by
his own violation of the Rule.

Moreover, in Treece v. State, 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 sup-
ported, the subsequent postponement to
conduct psychiatric examinations was not
in violation of the Rule.

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. When a
motion to dismiss is granted, however,
the State may appeal immediately. 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. 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 mo-
tion on the record. 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 pre-
served for review.

The scope of appellate review is nar-
row. Rule 4-271 places wide discretion
in the hands of the administrative judge
determining whether good cause ex-
ists to postpone a case. 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.
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
1State 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); and cases cited infra.
2Norton, Maryland's Prompt Criminal Trial Provisions, Hixs and Beyond, 14 U. Balt. L. Rev. 447 (1985) (hereinafter Norton); and cases cited infra.
3Md. Rule 4-271(a).
5Casenote, supra note 1, at 477.
6Hicks, 285 Md. at 316, 403 A.2d at 359.
7Casenote, supra note 1, at 479.
8Id. at 481.
10407 U.S. 530.
13Md. Rule 4-271(a).
14Id.; see also Norton, supra note 2, at 455.
15Norton, supra note 2, at 455.
16Md. Rule 4-271.
1781 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.
18Id. at 408-09, 567 A.2d at 969-70.
19Id. at 409, 567 A.2d at 970.
20Id. at 409, 567 A.2d at 970.
21Id. at 408, 567 A.2d at 969.
22Id. at 409, 567 A.2d at 970.
23Id. at 409-10, 567 A.2d at 970.
25Id. at 716, 506 A.2d at 595.
26Id. at 715, 506 A.2d at 595.
27Id. at 716, 506 A.2d at 595.
28Id. at 716, 506 A.2d at 595.
29Id. at 716, 506 A.2d at 595.
30Id. at 716, 506 A.2d at 595.
31Id. at 716, 506 A.2d at 595.
32Id. at 716-17, 506 A.2d at 596.
33299 Md. 449, 474 A.2d 502 (1984); see Norton, supra note 2, at 458.
34Id. at 468.
35Id. at 469.
36See Casenote, supra note 2, at 458. See generally Casenote, supra note 1.
37P985). See Casenote, supra note 2, at 458. See generally Casenote, supra note 1; and cases cited infra.
39Norton, supra note 2, at 468.
40Id. at 467.
41Id. at 468.
43Id. at 468.
45Id. at 468.
46See Norton, supra note 2, at 467-68.
47Id. at 468.
48Id. at 468.
49Id. at 468.
50Id. at 468.
51Id. at 468.
52Id. at 468.
53Id. at 468.
54Id. at 468.
55Id. at 468.
56Id. at 468.
57Id. at 468.
58Id. at 468.
59Id. at 468.
60Id. at 468.
61Id. at 468.
62Id. at 468.
63Id. at 468.
64Id. at 468.
65Id. at 468.
66Id. at 468.
67Id. at 468.
69Id. at 468.
70Norton, supra note 2, at 466.
71Id. 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)).
73Id. at 135, 553 A.2d at 703.
74Id. at 124, 553 A.2d at 697.
75Id. at 124-25, 553 A.2d 697-98.
76Id. at 125, 553 A.2d at 698.
77Id. at 126, 553 A.2d at 698.
78Id. at 131, 553 A.2d at 701. See supra notes 6-8 and accompanying text.

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