

Circuit Court for Prince George's County
Case No. CT200034X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1295

September Term, 2022

FRANCIS AKANDE

v.

STATE OF MARYLAND

Graeff,
Berger,
Arthur,

JJ.

Opinion by Berger, J.

Filed: June 16, 2023

*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.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant, Francis Akande (“Akande”), first appeared in the Circuit Court for Prince George’s County on January 31, 2020. Months later, the COVID-19 pandemic began wreaking havoc on court calendars across Maryland. Successive Administrative Orders issued by the Supreme Court of Maryland (then the Court of Appeals) resulted in courts closing, reopening, and closing again over the ensuing roughly two years.¹ In so doing, these orders tolled legal deadlines and prompted the frequent rescheduling of numerous proceedings. Akande was one of many criminal defendants with a trial date caught in this scheduling tumult. After multiple postponements resulted in his trial being delayed roughly two years, Akande unsuccessfully sought the dismissal of the case against him. Akande noted a timely appeal in which he presents one question for our review:

- I. Did the [circuit] court erroneously deny Appellant’s motion to dismiss.

For the reasons explained herein, we affirm the circuit court’s ruling denying Akande’s motion to dismiss.

¹ See generally Final Administrative Order on Jury Trials and Grand Juries During the COVID-19 Emergency, at 3 § (f) (Md. Mar. 28, 2022) (summarizing prior orders, including periods of suspended jury trials -- March 16 through October 5, 2020; November 16, 2020 through April 23, 2021; and December 29, 2021 through March 6, 2022 -- and relevant tolling provisions); *(COVID-19) Administrative Orders*, MdCourts.gov, <https://mdcourts.gov/coronavirusorders> (last visited May 25, 8:37 A.M.) (archiving all administrative orders issued by the Supreme Court of Maryland related to the COVID-19 pandemic); *Maryland Judiciary COVID-19 Timeline of Events*, MdCourts.gov, <https://mdcourts.gov/sites/default/files/import/coronavirus/marylandjudiciarycovid19timeline.pdf> [<https://perma.cc/2TW5-F4AC>] (last visited May 25, 2022, 9:04 A.M.) (providing a timeline of events regarding the COVID-19 pandemic’s impact on the Maryland judiciary).

FACTS AND PROCEDURAL HISTORY

The Hicks Rule

“Maryland law requires that a criminal case be brought to trial within 180 days of the appearance of counsel or the appearance of the defendant before the circuit court, whichever occurs first.” *Choate v. State*, 214 Md. App. 118, 139 (2013) (citing Md. Code (2001, 2018 Repl.) § 6-103(a) of the Criminal Procedure Article (“CP”); Md. Rule 4-271(a)). While applying a prior version of this legislation in *State v. Hicks*, the Supreme Court of Maryland “held that compliance with the deadline in the rule was mandatory and that any postponement beyond that deadline must be authorized by the administrative judge for the requisite case.” *Tunnell v. State*, 466 Md. 565, 571 (2020) (citing *State v. Hicks*, 285 Md. 310, 318 (1979)). The Court further held that a failure to begin trial before the conclusion of this 180-day deadline “necessitates dismissal of the charges with prejudice.” *Id.* (citing *State v. Hicks*, 285 Md. 310, 318 (1979)).

For the dismissal sanction provided by *Hicks* to apply, “two conditions must be met: (1) postponement is not made in accordance with Rule 4-271 and CP § 6-103 and (2) the 180-day period has expired without trial.” *Timberlake v. State*, 257 Md. App. 129, 143–44 (2023). Through the subsequent decades of this precedent’s jurisprudence, enforcement of the 180-day deadline became known as the “*Hicks* rule,” and the deadline date upon which trial must commence became known as the “*Hicks* date.” *Tunnell, supra*, 466 Md. at 571. Accordingly, we shall borrow these terms when discussing the important chronological benchmarks of Akande’s case.

Akande's Court Appearances

The State indicted Akande on January 9, 2020.² His initial court appearance occurred on January 31, 2020, resulting in a *Hicks* date of July 29, 2020. At this initial appearance, the circuit court set a trial date for May 11, 2020.

On March 12, 2020, the Supreme Court of Maryland issued the first of what would become successive Administrative Orders related to court closures and similar emergency provisions taken in response to the COVID-19 pandemic. *See* Administrative Order on the Statewide Suspension of Jury Trials, at 1 § (a) (Md. Mar. 12, 2020); *see also* Final Administrative Order on Jury Trials and Grand Juries During the COVID-19 Emergency, at 3 § (f) (Md. Mar. 28, 2022) [hereinafter *Final Order on Jury Trials*] (providing dates for all court closures due to the COVID-19 pandemic). By April 3, 2020, the suspension of jury trials extended to include the start of Akande's trial, resulting in the first of several postponements. *See* Administrative Order on Expanding the Statewide Suspension of Jury Trials and Suspending Grand Juries, at 2 § (c) (Md. Apr. 3, 2020). While closing courts and suspending trials, the Supreme Court suspended and tolled all "statutory and rule deadlines related to the adjudication of criminal matters . . . by the number of days the courts are closed" in accordance with the emergency Administrative Orders. *Id.* at 2 § (e); *see also* Administrative Order on Emergency Tolling or Suspension of Statutes of Limitations and Statutory and Rules Deadlines and Certain Statutory and Rules Deadlines

² *See generally* App'x A, *infra* (setting forth the important dates of this case and their impact on Akande's *Hicks* date).

in Pending Matters, at 2 § (b) (Md. Apr. 3, 2020); *Final Order on Jury Trials, supra*, at 3 § (f).

On May 22, 2020, the Supreme Court announced the resumption of jury trials on October 5, 2020. *See Administrative Order Lifting the Statewide Suspension of Jury Trials and Resuming Grand Juries*, at 2 § (d) (Md. May 22, 2020). In so doing, the Court provided an additional 30 days of tolling to all previously suspended and tolled deadlines. *Id.* at 3 § (h). Upon this reopening, Akande’s *Hicks* date would have been March 22, 2021.³ Attempting to set a new trial date in anticipation of the courts reopening, the circuit court held a scheduling hearing on June 22, 2020 that was itself ultimately rescheduled due to the absence of Akande’s counsel. That same day, the circuit court’s administrative judge issued a *sua sponte* good cause order continuing the case “beyond the 180[-]day [*Hicks*] requirement.” The parties later reconvened for a status hearing on July 8, 2020 and agreed to a new trial date of January 27, 2021.

The restart of jury trials was short lived, though, as the Supreme Court again suspended all criminal trials, without already empaneled juries, as of November 16, 2020. *See Third Amended Administrative Order Re-Imposing the Statewide Suspension of Jury*

³ Forty-four days passed between Akande’s first appearance and the March 16, 2020 suspension of criminal jury trials. Accordingly, 136 days hence the reopening on October 5, 2020 would be February 18, 2021. *See App’x A, infra*. Adding another 30 days of tolling pursuant to the relevant Administrative Order results in Akande’s *Hicks* date falling on March 20, 2021. Because March 20, 2021 was a Saturday, Akande’s *Hicks* date became Monday, March 22, 2021. *See Md. Rule 1-203(a)(1)* (stating that if a time period prescribed by the Maryland Rules or statute falls on a Saturday, Sunday, or holiday, it runs until the next business day).

Trials and Maintaining Grand Juries, at 2 § (d) (Md. Nov. 12, 2020). Again, the Supreme Court tolled all deadlines for the duration of the statewide court closure plus an additional 30 days upon their eventual reopening. *Id.* at 3 § (f), (h), (l); *see also Final Order on Jury Trials, supra*, at 3 § (f).

With the trial now postponed again, the circuit court held another status conference on January 27, 2021 in an attempt to reschedule the trial. The court and the parties reviewed several potential dates, eventually landing on January 18–20, 2022. Both the State and Akande’s counsel verbally affirmed that those dates worked for them. Jury trials eventually resumed on April 26, 2021. *See Sixth Amended Administrative Order Clarifying the Statewide Suspension of Jury Trials and Maintaining Grand Juries*, at 2 § (d) (Md. Feb. 1, 2021); *see also Final Order on Jury Trials, supra*, at 3 § (f). Upon this resumption, Akande’s *Hicks* date was August 30, 2021.⁴

Nonetheless, closures thwarted the parties’ scheduling efforts again, as the Supreme Court suspended jury trials for a third time as of December 29, 2021, which lasted until March 6, 2022. *See Interim Administrative Order of December 27, 2021 Restricting Statewide Judiciary Operations in Light of the Omicron Variant of the COVID-19 Emergency*, at 3 § (d) (Md. Dec. 27, 2021); *Final Order on Jury Trials, supra*, at 3 § (f).

⁴ Upon the resumption of criminal jury trials, 95 days, plus the additional 30 days of tolling provided by the Administrative Orders, remained until Akande’s *Hicks* date. As such, 125 days from April 26, 2021 was Sunday, August 29, 2021, resulting in a *Hicks* date of Monday, August 30, 2021. *See* Md. Rule 1-203(a)(1); *see also App’x A, infra*.

A subsequent January 5, 2022 conference report reflects that the circuit court rescheduled Akande’s trial for September 19, 2022.

Akande’s Motion to Dismiss

On June 21, 2022, Akande filed a motion to dismiss “based on a violation of his federal constitutional right to speedy trial, his speedy trial rights under [Md.] Rule 4-271, and [*State v. Hicks*], 285 Md. 310 (1979),” arguing there had been no valid good cause finding nor defense consent to exceed the 180-day deadline. At a July 5, 2022 hearing, the circuit court took notice of the administrative judge’s June 22, 2020 order finding good cause for continuing Akande’s trial beyond a potential *Hicks* date and reassigned the motions hearing to that judge.

The administrative judge heard the matter on August 15, 2022. Akande argued that his *Hicks* date had passed, that the administrative judge’s *sua sponte* good cause finding both lacked merit and violated procedural due process, and that Akande or his counsel never consented to exceed *Hicks*. The administrative judge cited as the basis for his good cause finding the uncertainty and challenge of scheduling a backlog of jury trials scuttled by multiple court closures. Further, he found that Akande consented to a trial past his *Hicks* date during the January 27, 2021 scheduling hearing by expressly agreeing to a January 18, 2022 trial. Accordingly, the administrative judge denied Akande’s motion.

On September 9, 2022, Akande pleaded guilty to fourth-degree sex offense and was sentenced to one year of incarceration (with credit for one year time served and five years

of supervised probation), and received a \$500 fine that the court suspended. Akande filed his notice to appeal on September 19, 2022.

DISCUSSION

Standard of Review

“Normally, we review a trial court’s decision on a motion to dismiss an indictment for abuse of discretion.” *State v. Henry*, 256 Md. App. 156, 169–70 (2022), *reconsideration denied* (Jan. 3, 2023) (citation omitted), *cert. granted sub nom. Jackson v. State*, No. 353, Sept. Term., 2022, (Md. Mar. 2, 2023), and *cert. granted sub nom. State v. Powell*, No. 359, Sept. Term., 2022, (Md. Mar. 2, 2023). “But where, as here, the trial court’s decision ‘involves an interpretation and application of Maryland constitutional, statutory or case law, [we] must determine whether the trial court’s conclusions are “legally correct” under a *de novo* standard of review.’” *Kimble v. State*, 242 Md. App. 73, 78 (2019) (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)). “[W]e defer to the trial court on the findings of historical facts, unless clearly erroneous[,]” when assessing issues related to a defendant’s speedy trial. *Greene v. State*, 237 Md. App. 502, 511 (2018). Therefore, while we review the circuit court’s interpretation of the *Hicks* rule as applied to this matter *de novo*, we review the circuit court’s factual findings for clear error, and its ultimate denial of the motion to dismiss for abuse of discretion.

I. The Circuit Court Did Not Err By Denying Akande’s Motion to Dismiss.

A. *Because the July 27, 2021 hearing resulted in rescheduling the start of Akande’s trial beyond his Hicks date, we treat that event as the “critical postponement” for our review.*

“The critical determination for appellate review is the postponement that extends the trial date beyond the *Hicks* date.” *Tunnell, supra*, 466 Md. at 589. If there have been multiple postponements and reschedulings, “the critical order . . . for the purposes of the dismissal sanction, is the order having the effect of extending the trial date beyond 180 days.” *State v. Frazier*, 298 Md. 422, 428 (1984). The initial question of our review is establishing which of the two postponements Akande cites as grounds for dismissal was the “critical postponement.”

On June 22, 2020, the circuit court issued its order noting that, “due to the Administrative Emergency Order regarding the COVID-19 pandemic good cause has been found to continue this matter to go beyond the [180-day *Hicks*] requirement, [Md.] Rule 4-271.”⁵ Following to the subsequent suspensions of jury trials and the Administrative Orders tolling Akande’s *Hicks* deadline, the court later rescheduled the trial within the

⁵ In his appeal, Akande challenges on two grounds the June 22, 2020 good cause order continuing his case past a potential *Hicks* date. First, he asserts that the good cause order violated his due process rights, because he was not afforded notice or an opportunity to be heard on the issue. He further argues that the circuit court abused its discretion by finding good cause to continue his case beyond the *Hicks date*, particularly when the court was able to reschedule his trial within the bounds of *Hicks* just two weeks later. Because we find, *infra*, that the January 27, 2021 hearing resulted in the “critical postponement” -- and not the June 22, 2020 good cause order -- we refrain from addressing the merits of Akande’s challenge to the administrative judge’s good cause order. See *Cook, supra*, 322 Md. at 104.

boundaries of Akande’s *Hicks* window, only to result in the cancelation and rescheduling of the trial date, again.⁶ Therefore, despite the June 22, 2020 order from the administrative judge finding good cause to “continue this matter and to go beyond the 180[-]day [*Hicks*] requirement,” because the court later rescheduled trial *prior to* the adjusted *Hicks* date, this rescheduling was not the “critical postponement.” *State v. Cook*, 322 Md. 93, 104 (1991) (holding that, upon review, our Court is not concerned with postponements that do not “tak[e] the case beyond the 180-day limit”).

Instead, the January 27, 2021 hearing, in which the parties rescheduled the trial to begin January 18, 2022, was the “critical postponement.” *Id.* Entering that hearing, 85 of the 180 days in Akande’s *Hicks* timeline had expired, leaving 95 days, plus the additional 30 days of tolling provided by the successive Administrative Orders, for the State to bring him to trial by his *Hicks* date. Thus, upon the reopening of the courts on April 26, 2021, Akande’s *Hicks* date was August 30, 2021.⁷ Therefore, the January 27, 2021 scheduling

⁶ At the time of the June 22, 2020 status conference and the subsequent order finding good cause to continue Akande’s trial, Akande’s *Hicks* date was March 22, 2021. *See* note 3, *supra*; App’x A, *infra*. At the July 8, 2020 status conference, the circuit court rescheduled Akande’s trial for January 27, 2021, a date prior to the expiration of his *Hicks* clock. This trial was later canceled by the second suspension of jury trials. *See Final Order on Jury Trials*, at 3 § (f).

⁷ When jury trials resumed on April 26, 2021, Akande had 125 days remaining before his *Hicks* date (95 of the original 180 days remained, plus the additional 30 days provided by the tolling provisions of the Administrative Orders). *See* note 4, *supra*. The 125th day fell on August 29, 2021, but because this date was a Sunday, Akande’s *Hicks* date extended to the ensuing Monday, August 30, 2021. Md. Rule 1-203(a) (providing deadlines that fall on weekends or holidays carry to the next day the court is open). *See* App’x A, *infra*.

conference satisfies the definition of the “critical postponement,” because that proceeding resulted in a trial date in early 2022, well past Akande’s *Hicks* date. *Tunnell, supra*, 466 Md. at 589. As such, our review will focus solely on this January 27, 2021 postponement. *See Cook, supra*, 322 Md. at 104.

B. Because Akande’s counsel consented to a trial date outside of the 180-day Hicks deadline, the circuit court properly declined to dismiss the State’s case against Akande.

As noted in *Hicks* and its progeny, the Supreme Court of Maryland created the *Hicks* rule “to carry out the public policy favoring the prompt disposition of criminal cases.” *Timberlake, supra*, 257 Md. App. at 144–45 (quoting *Tunnell v. State*, 466 Md. 565, 571–72 (2020)). Therefore, a defendant who “seeks or *expressly* consents to a trial date in violation of the rule . . . should gain no advantage from such violation.” *Dorsey, supra*, 349 Md. at 702–03 (quoting *Goins v. State*, 293 Md. 97, 108 (1982); *State v. Hicks*, 285 Md. 319, 335 (1979)). Express consent to a trial in violation of *Hicks* can occur if the defendant, or his counsel, agree to a trial beyond the 180-day deadline, even if the consenting party does not “understand that the date he consents to is outside the 180-day period.” *Henry, supra*, 256 Md. App. at 172 (quoting *State v. Lattisaw*, 48 Md. App. 20, 28 (1981)). “Put another way, a defendant can waive compliance with the *Hicks* deadline by consenting expressly to a specific trial date but need not consent expressly to waiving *Hicks*.” *Id.* at 174. Indeed, a defendant can consent to a trial date beyond *Hicks* even without knowing when exactly *Hicks* expires. *State v. Lattisaw*, 48 Md. App. 20, 28 (1981).

The State relies on this Court’s decision in *Lattisaw* as a clear analogue that demonstrates why Akande is not entitled to dismissal.⁸ In *Lattisaw*, we held that respective counsel for each of two co-defendants consented to a trial outside of the *Hicks* period. *Id.* at 27–29. One defendant’s attorney expressly agreed to a trial date beyond the *Hicks* date, later claiming she was not aware that the date she agreed to was beyond the deadline. *Id.* at 25. Counsel for the other defendant did not expressly agree to a specific date, but he instead said that his calendar was free on the trial date proposed by the court. *Id.* at 26–27. He, too, later admitted that he had not calculated his client’s actual *Hicks* deadline before the court proposed the new trial date that extended the trial beyond *Hicks*. *Id.* at 26. This Court held that those in charge of scheduling criminal trials need not inform defense counsel about a proposed trial date’s alignment with the *Hicks* timeline, as “it is [defense counsel’s] job to know.” *Id.* at 28–29. “Defense counsel presumably can count to 180 as well as prosecutors; they know when they entered their appearances when the clock began

⁸ In *Henry*, we adopted the same holding as in *Lattisaw*, that a defendant who consents to a trial beyond the *Hicks* date -- regardless of the defendant or counsel’s awareness of the postponement extending the matter beyond *Hicks* -- cannot seek the relief of dismissal under the *Hicks* rule. *Henry, supra*, 256 Md. App. at 177, 179. Nevertheless, *Henry*’s real contribution to *Hicks* jurisprudence is its differentiation between a defendant consenting to exceed *Hicks* by affirmatively acknowledging the new trial date, and a defendant not consenting -- and thereby being entitled to the relief of dismissal under *Hicks* -- after the defendant simply sat silently as a circuit court ordered a new trial later than the *Hicks* deadline. *Id.* at 181 (“[The third defendant’s] silence ends up serving as the reason that his dismissal is affirmed while his co-defendants, who spoke up during the relevant proceedings, have their dismissals reversed for agreeing expressly to the date.”). Here, Akande’s counsel expressly stated that he was amenable to the proposed January 18–20, 2022 trial dates which were later determined to be beyond the *Hicks* deadline. As such, this ‘silence vs. speaking’ consent dichotomy is not germane to our analysis.

to tick[,] and they can figure out when the time under the Rule expires.” *Lattisaw, supra*, 48 Md. App. at 28.

Moreover, it does not discredit the “expressness” of a defendant’s, or their counsel’s, consent “that they may be unaware that the date to which they agree is, in fact, beyond the 180-day period.” *Id.* at 29. Requiring “dismissal of an indictment in such a case would be tantamount to doing precisely what the [*Hicks*] Court said was inappropriate,” permitting a defendant to gain the advantage from a violation of the *Hicks* rule “when [the defendant] (through counsel) was a party to that violation.” *Id.*

In our view, Akande’s situation is akin to *Lattisaw*. First, undoubtedly Akande’s counsel consented to the trial beginning January 18, 2022. At the January 27, 2021 hearing, the court clerk proposed several potential dates in the late summer and fall of 2021, of which the State and the defense could not align their availability. While discussing the possibility of pretrial release, Akande’s counsel then offered to potentially look at dates in 2022. The clerk finally proposed that the trial be held “January 18th through the 20th [of 2022.]” The State replied “[t]hat’s fine with the State.” Akande’s counsel followed by stating “[t]hat works for the defense, Your Honor.” This is clearly express consent to the suggested trial date. *See Lattisaw, supra*, 48 Md. App. at 29. *Compare Henry, supra*, 256 Md. App. at 177, 179 (reversing dismissal of charges against both defendants who expressly consented to trial date beyond their respective *Hicks* dates) *with Henry, supra*, 256 Md. App. at 181 (affirming dismissal of charges against defendant who “acquiesced

silently to the trial date” one day beyond *Hicks* deadline, due to a lack of an “overt act evidencing an intent to consent to the delay” beyond *Hicks*.)

Prior to the January 27, 2021 scheduling hearing, 85 of the 180 days of Akande’s *Hicks* clock had already run. Following the hearing -- when courts did reopen on April 26, 2021 -- Akande’s *Hicks* date was August 30, 2021, well before the January 18, 2022 trial date to which Akande’s counsel consented.⁹ Therefore, Akande’s counsel’s express consent to the new trial date permitted the proceeding to stretch beyond the *Hicks* date.

Akande argues that he could not have consented to exceeding *Hicks* by agreeing to the January 18, 2022 trial because at the time of the January 27, 2021 hearing -- with courts closed and deadlines suspended and indefinitely tolling -- counsel could not have known when the *Hicks* deadline was, because there was no *Hicks* date to be known. Though we recognize the uncertainty of projecting such calendar dates, we focus on what the parties knew, or should have known, entering the “critical hearing.”

After courts closed on March 16, 2020, reopened on October 5, 2020, and closed again on November 16, 2020, they remained closed at the time of the January 27, 2021 hearing. Nevertheless, at the time of that hearing, jury trials were projected to resume as of April 26, 2021. *See* Fifth Amended Administrative Order Extending the Statewide Suspension of Jury Trials and Maintaining Grand Juries, at 2 § (d) (Md. Dec. 22, 2020) (reiterating previous and current court closures and noting that juries “shall be suspended

⁹ *See* notes 4 & 7, *supra*, explaining Akande’s August 30, 2021 *Hicks* date; App’x A, *infra*.

and rescheduled as promptly as feasible with dates beginning April 26, 2021, pending further” Administrative Orders altering this schedule). Indeed, operating off of the most recent scheduling information provided by the December 22, 2022 Fifth Amended Administrative Order, both the State and Akande could calculate his presumed *Hicks* date based upon the projected reopening as they sought to reschedule trial during the January 27, 2021 proceeding.

Therefore, Akande’s counsel could have determined his client’s *Hicks* date would likely fall in late summer or early fall of 2021, even if he did not tally the August 30, 2021 date precisely. Accordingly, when he expressly consented to a trial date beginning on January 18, 2022, that moved the matter beyond the *Hicks* date, resulting in Akande losing the ability to seek dismissal due to a violation of the *Hicks* rule. *See Henry, supra*, 256 Md. App. at 171. Notably, Akande’s counsel did not need to know the trial date would likely exceed *Hicks* for his consent to thwart his ability to pursue dismissal of the charges against him, so long as he expressly acknowledged and accepted the new trial date. *See id.* at 177; *Lattisaw, supra*, 48 Md. App. at 29.

At oral argument, Akande asserted that following the administrative judge’s June 22, 2020 order finding good cause to postpone trial past the parameters of *Hicks*, only the administrative law judge or his designee could alter the order and again postpone trial beyond the *Hicks* date. *See* CP § 1-603(b)(2). In so doing, Akande asks our Court, in the alternative to dismissing the case, to remand the case to determine if the judge presiding over the January 27, 2021 “critical postponement” hearing was the administrative judge’s

designee with the requisite authority to postpone the trial date following the continuance for good cause. Notably, this argument was raised for the first time at oral argument. We, therefore, decline to consider this argument that was not raised or decided below. *Tallant v. State*, 254 Md. App. 665, 689 (2022) (“Maryland courts have the discretion to decline to address issues that have not been adequately briefed by a party.”); Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court. . .”).

Further, we reiterate what has been a guiding principle of this jurisprudence since *Hicks* created the dismissal remedy that “put teeth” to Maryland Rule 4-271(a):

[D]ismissal is not proper “where the defendant, either individually or by his attorney, seeks or expressly consents to a trial date” outside of the time period. . . . This isn't because the defendant waives the requirements of the rule, but because it would be “entirely inappropriate for the defendant to gain advantage from a violation of the rule when he was a party to that violation.”

Henry, supra, 256 Md. App. at 171 (quoting *State v. Hicks*, 285 Md. 310, 335 (1979)); see also *Tunnell v. State*, 466 Md. 565, 596 (2020) (“[D]ismissal of criminal charges would be ‘inappropriate’ in situations where the defendant, personally or through counsel, seeks or expressly consents to a trial date that does not comply with the [*Hicks*] rule.”); *Timberlake, supra*, 257 Md. App. at 150 (“It would make little sense if where Timberlake did not pursue the opportunity to move his trial back before the *Hicks* date while it was still a possibility, he could nonetheless reap the windfall of having his case

dismissed due to the delay.”). Accordingly, we affirm the circuit court’s denial of Akande’s motion to dismiss.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

APPENDIX A - Chart of Important Dates and Their Impact on Akande's Hicks Date

Event	Dates	Hicks days Run	Hicks days left	Hicks Date
First Appearance	Jan. 31, 2020	0	180	May 11, 2020
First suspension of jury trials	Mar. 16, 2020	44* *Jan. 31 – Mar. 16, 2020	136	n/a
Good cause order	June 22, 2020	n/a	n/a	Indefinite postponement
Scheduling conference	July 8, 2020	n/a	n/a	Schedule trial Jan 27, 2021
Courts reopen	Oct. 5, 2020	44	136	Mar. 22, 2021 (Saturday, Mar. 20, 2021)
Second suspension of jury trials	Nov. 16, 2020	85 = 41* + 44** *41 days = Jan. 31 thru Mar. 16, 2020 **44 days = October 5 thru November 16, 2020	125 = 95* + 30** *95 = 180 - 85 ** additional days tolling provided by Admin. Orders	n/a
Fifth Administrative Order (announcing courts reopen April 26, 2021)	Dec. 22, 2020	85	125	Projected to be August 29, 2021 (125 days past April 26, 2021 reopening)
Critical Postponement	Jan. 21, 2021	85	125	Akande consents to trial on Jan. 18, 2022, past projected Hicks
Courts reopen	Apr. 26, 2021	85	125	Aug. 30, 2021 (Sunday, Aug. 29, 2021)
Third suspension of jury trials	Dec. 29., 2021	210 = 180 + 30	0	Hicks date previously expired
Scheduled trial	Jan. 18-20, 2022	Past Hicks	Past Hicks	Past Hicks
Akande files motion to dismiss	June 21, 2022	n/a	n/a	n/a
Hearing on motion to dismiss	Aug. 15, 2022	n/a	n/a	n/a
Akande pleads guilty	Sept. 9, 2022	n/a	n/a	n/a
Akande appeals to App. Ct. of Md.	Sept. 19, 2022	n/a	n/a	n/a