

Circuit Court for Somerset County  
Case No. C-19-CR-21-000177

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1591

September Term, 2023

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ZARION JUWAN MCBRIDE

v.

STATE OF MARYLAND

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Shaw,  
Tang,  
Wright, Alexander, Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Shaw, J.

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Filed: January 21, 2025

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Zarion McBride, appeals an order of the Circuit Court for Somerset County denying his motion to transfer jurisdiction to the juvenile court. In 2021, Appellant, who was then fifteen years old, was charged as an adult with first-degree rape and other related offenses. Appellant’s attorney filed a motion to transfer his case to the juvenile court and requested a competency evaluation. The court ordered the Department of Juvenile Services (“DJS”) to conduct an investigation and to provide a Transfer Waiver Report. The court ordered the Maryland Department of Health (“MDH”) to conduct the competency evaluation, and at a hearing in February 2022, after receiving the evaluation, the court found Appellant not competent to stand trial. The court noted that the report indicated that competency could be obtained in the future, and it ordered DJS to provide attainment services. An evaluation filed with the court in April 2022, by MDH, indicated that Appellant was competent to stand trial.

A hearing on Appellant’s motion to transfer jurisdiction was held on October 18, 2022. During the hearing, the court asked the attorneys whether Appellant’s competency had been addressed, and both attorneys indicated that Appellant had been found competent. The court denied Appellant’s motion. It was later determined that no competency hearing was held. Appellant entered a guilty plea of first-degree rape, conditioned on his right to appeal the juvenile transfer determination. He was sentenced to life, with all but fifty years

suspended, and five years of probation. Appellant timely noted this appeal. For our review, we have rephrased Appellant’s original question into two separate questions<sup>1</sup>:

1. Did the trial court make a finding that Appellant was competent to stand trial?
2. Did the trial court err in denying the motion to transfer jurisdiction to the juvenile court?

For the reasons that follow, we hold that the trial court did not make a determination as to Appellant’s competency. We, therefore, decline to address the transfer question. We reverse and remand this matter, for the circuit court to hold a hearing to determine whether Appellant is competent, and depending on its outcome, a juvenile transfer hearing.

### **BACKGROUND**

In September 2021, Appellant, then fifteen years old, broke into a woman’s apartment and sexually assaulted her. Appellant was charged as an adult<sup>2</sup> with first-degree

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<sup>1</sup> Appellant’s original question presented one issue, “Did the trial court err in denying the motion to transfer jurisdiction to the juvenile court?”

<sup>2</sup> According to Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03(d)(1), the juvenile court does not have jurisdiction over specific crimes committed by juveniles:

A child at least 14 years old alleged to have done an act that, if committed by an adult, would be a crime punishable by life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4–202 of the Criminal Procedure Article[.]

Because Appellant’s charge of first-degree rape is punishable by up to life in prison pursuant to Md. Code Ann., Criminal Law § 3-303(d)(1), the circuit court, or the adult system, had original jurisdiction over his case.

rape and related charges<sup>3</sup> in the Circuit Court for Somerset County. On December 20, 2021, Appellant filed a motion to transfer jurisdiction to the juvenile court. The circuit court ordered DJS to conduct an investigation in order to evaluate whether it would grant Appellant’s motion. DJS filed its Transfer Investigation Report on December 28, 2021.

Defense counsel also requested that Appellant undergo a competency evaluation; however, the record does not indicate the date this request was made. At a hearing on February 14, 2022, the court, after reviewing a report submitted by MDH, determined that Appellant was not competent to stand trial. The judge stated, “Based upon the report from the Department of Health, the Court is going to order DJS to provide attainment services in this matter.” On February 16, 2022, the court entered an order stating, “Having found at the Competency Hearing that the Defendant, Zarion McBride, is incompetent to proceed in the above-captioned matter at this time, and there is substantial probability that the respondent may be able to attain competency in the foreseeable future if attainment services are provided[.]”

On February 24, 2022, the State filed a motion requesting that Appellant “be evaluated for competency by [MDH] as a person in the adult system.” The court granted

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<sup>3</sup> Appellant was charged with home invasion, third-degree burglary, first-degree rape, second-degree rape, third-degree sex offense, fourth-degree sex offense, first-degree arson, second-degree malicious burning, second-degree assault, reckless endangerment, and malicious destruction of property. After Appellant entered a conditional guilty plea to first-degree rape, the State dismissed the remaining charges.

the State’s motion. MDH filed a competency report on April 3, 2022, finding Appellant competent to stand trial.

On October 18, 2022, the court held a hearing on Appellant’s motion to transfer jurisdiction. The court first heard testimony from the State, including two DJS intake directors, Christa Fletcher and Joe Gravis. The court then heard testimony on behalf of the defense from Dr. Eric Lane, who performed an evaluation of Appellant. At the close of evidence regarding the issue of transfer, the parties addressed competency during a bench conference:

[THE COURT] It has been a while since we have dug our heels in on this. I guess the question is did we ever address competency?

[DEFENSE COUNSEL] He was found competent.

[PROSECUTOR] He was – yes.

[THE COURT] Yes. I wanted to make sure that we did that on the record.

[PROSECUTOR] I am not sure you were here for that. I think it was another hearing and Ms. Savoy was covering.

[DEFENSE COUNSEL] Right.

[THE COURT] Oh, okay.

[DEFENSE COUNSEL] We submitted it in.

[THE COURT] Okay. I didn’t know if it was reserved on until this or not. So that is done. So we are good.

[PROSECUTOR] So it is not – not the issue.

[THE COURT] Okay. Perfect. So then we mainly just have to have a decision within ten days on this. So –

[DEFENSE COUNSEL] Right.

[THE COURT] – if I allow you to do a summation of your argument within five days. And then–

[DEFENSE COUNSEL] I will have it by Friday.

Appellant’s motion to transfer jurisdiction was denied on October 28, 2022. Appellant, then, on June 21, 2023, entered a guilty plea to first-degree rape conditioned on his right to appeal the denial of his motion to transfer jurisdiction to the juvenile court. The remaining charges were dismissed. On September 18, 2023, Appellant was sentenced to life, with all but fifty years suspended, and five years of supervised probation upon release.

Defense counsel filed a motion to clarify that Appellant’s guilty plea “was in actuality a conditional guilty plea in which the Defendant would plead guilty to one count of 1st degree rape, the State would dismiss the other charges and recommend a sentence of Life suspend all but fifty years to serve with the right to appeal the denial of the Reverse Waiver Motion.” The court granted the motion. Appellant noted this timely appeal.

### **STANDARD OF REVIEW**

When a criminal defendant is tried without a proper finding of competency, it is a violation of the Due Process Clause of the Fourteenth Amendment. *Medina v. California*, 505 U.S. 437, 439 (1992). Whether or not a trial court is required to make a competency finding is governed by Md. Code Ann., Crim. Proc. § 3-104(a). “Where the trial court’s decision involves an interpretation and application of Maryland constitutional, statutory, or case law, we determine *de novo*, whether the trial court’s conclusions are legally

correct.” *State v. Grafton*, 255 Md. App. 128, 143 (2022) (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)).

## DISCUSSION

### **I. The court failed to make a finding regarding Appellant’s competency.**

Appellant argues the trial court erred when it proceeded with the hearing on the motion to transfer jurisdiction without first making a finding as to whether he was competent. Appellant relies, in part, on *Sibug v. State*, 445 Md. 265 (2015). He contends that the court’s failure to find him competent beyond a reasonable doubt violated Md. Code Ann., Crim. Proc. § 3-104(a) and denied him his due process rights. Appellant further contends that the issue of whether the court failed to make a finding as to his competency is properly before this Court. Appellant argues that, although he did not raise the issue of his competency at the motions hearing, his conditional guilty plea preserved his right to appeal the denial of the motion to transfer, which is interrelated with the court’s assessment of his mental condition and amenability to treatment.

The State argues that Appellant did not preserve this issue as a part of his conditional guilty plea. Appellant’s plea was conditioned only as to his right to appeal the denial of the motion to transfer jurisdiction. If considered, the State argues that, based on *Wood v. State*, 209 Md. App. 246 (2012), the court was not required to announce its competency finding as it only needed to reach a decision based on evidence presented in the record. The State contends that MDH submitted a report finding Appellant competent to stand trial,

and neither party challenged this finding. Thus, Appellant waived the issue of competency when defense counsel stated that he was competent.

We agree with Appellant that whether he was competent is encompassed in his contention that the court erred in denying his motion to transfer jurisdiction. Proceeding to trial or entering a plea without a required competency finding is a violation of a defendant’s due process rights. *Medina*, 505 U.S. at 439. The fact that this issue was not explicitly stated within the conditional guilty plea does not preclude this Court’s consideration. We also do not agree that the limited statements made by counsel at the motions hearing constitute a waiver of the competency issue.

“[T]he Due Process Clause of the Fourteenth Amendment prohibits the criminal prosecution of a defendant who is not competent to stand trial.” *Medina*, 505 U.S. at 439 (citations omitted); *Peaks v. State*, 419 Md. 239, 251 (2011) (“Due process substantively prohibits the criminal prosecution of a defendant who is incompetent to stand trial.”). The Maryland Supreme Court defines competency as a criminal defendant’s “present ability to consult with his lawyer with a reasonable degree of rational understanding—and . . . a rational as well as factual understanding of the proceedings against him.” *Thanos v. State*, 330 Md. 77, 85 (1993) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)). The court presumes that a criminal defendant is competent to stand trial. *Wood v. State*, 209 Md. App. 246, 290 (2012). Whether or not a trial court is required to make a competency finding is governed by Md. Code Ann., Crim. Proc. § 3-104(a), which states:

If, before or during a trial, the defendant in a criminal case or a violation of probation proceeding appears to the court to be incompetent to stand trial or



the defendant alleges incompetence to stand trial, **the court shall determine, on evidence presented on the record, whether the defendant is incompetent to stand trial.**

(emphasis added). When an appellant raises the issue of competency in the trial court, the “determination that an accused is competent to stand trial must be found beyond a reasonable doubt.” *Wood*, 209 Md. App. at 290 (quoting *Peaks*, 419 Md. at 252).

The Maryland Supreme Court explained in *Roberts v. State*, 361 Md. 346 (2000) the three-step process for competency determinations under Md. Code Ann., Crim. Proc. § 3-104(a), stating:

The language of [§ 3-104](a) mandates actions to be undertaken by a trial court, if an accused’s competency is properly called into question. These actions can be broken down into three distinct and simple steps: (1) First, a determination of competency may be made at any time before or during a trial; (2) Second, such a determination must be made if the defendant in a criminal case appears to be incompetent to stand trial or the defendant alleges incompetence to stand trial; and (3) Finally, **the court must make its determination on the evidence presented on the record.**

*Id.* at 364 (emphasis added). As to the third element, the court elaborated on the importance of making competency determinations based on the evidence in the record, stating:

We view the Legislature’s inclusion of such language [‘on evidence presented on the record,’] as a clear indication that it intended the determination of competency to be essential in preserving an accused’s due process rights and that such rights could only be preserved if the determination was made on evidence presented on the record.

*Id.* at 366.

In the case of *Wood v. State*, 436 Md. 276 (2013), Wood was indicted in a stabbing death. *Id.* at 281. His defense counsel expressed concerns to the court regarding his competency, and the court ordered MDH to conduct an evaluation of Wood’s competency.

*Id.* In a subsequent hearing, counsel indicated that Wood refused to be evaluated by a psychiatrist from MDH. *Id.* at 282. At a later hearing, defense counsel informed the court that both he and Wood agreed to withdraw the request for a competency evaluation. *Id.* Wood was found guilty of first-degree murder and argued that the trial court erred in failing to make a competency finding on the record following the withdrawal of his request for a competency evaluation. *Id.* at 284–85.

Applying the *Roberts* test, the court explained that the first and second steps were satisfied because Wood made the request for an evaluation prior to trial and raised the issue of competency through a motion. *Id.* at 286–87. As to the third element, the court held “that the issue of competency is moot so long as the trial judge did not have a bona fide doubt that Petitioner was competent based on evidence presented on the record.” *Id.* at 288. It stated, “the record demonstrate[d] that Petitioner was afforded an opportunity to be heard, and there was sufficient evidence on the record for the trial court to discern Petitioner’s competence.” *Id.* at 288–89. The Maryland Supreme Court cautioned that “a defendant need not be afforded a formal hearing[,]” but “must be afforded an opportunity to present evidence upon which a valid determination can be made.” *Id.* at 289. “A judge with no jury present is not required to use any magic words to designate as a separate hearing the presentation to him of testimony and evidence for his determination of the competency of the accused to stand trial.” *Id.* at 289 (quoting *Peaks*, 419 Md. at 252).

The court determined that it was “reasonable to conclude that the trial judge credited defense counsel’s judgment to revoke his request for a competency evaluation as evidence

in favor of a continued presumption of Petitioner’s competence.” *Id.* at 290. The court cautioned that the trial court had a responsibility to pursue the issue *sua sponte* if it suspected that the petitioner might not be competent. *Id.* at 291. However, the court found that the record there did not “create a bona fide doubt in a trial judge’s mind” as to whether the petitioner was competent. *Id.* at 292. The court ultimately held that the trial court was “not required to make a determination of competency in the present case[.]” *Id.*

In the case of *Sibug v. State*, 445 Md. 265 (2015), Sibug argued that he was “not competent to stand trial and not criminally responsible.” *Id.* at 268. Following an evaluation by MDH, Sibug was found not competent due to “religious delusions[.]” *Id.* at 269. In January 2000, the court found Sibug incompetent. *Id.* at 270. By April 2000, MDH determined that Sibug was competent to proceed, and his trial was scheduled for August 2000. *Id.* However, MDH informed the court that Sibug’s “condition had deteriorated and that he was not competent to stand trial.” *Id.* at 270. MDH sent several more letters to the court indicating that Sibug was not competent up until 2003. *Id.* at 272–73. By 2003, Sibug had improved with medication, and MDH requested that the court make a determination as to the petitioner’s competency. *Id.* at 273. In May 2004, Sibug proceeded with his charges, and he was found guilty. *Id.* at 278. Because of his conviction, he faced deportation and filed a petition for writ of error *coram nobis* arguing “that he had not been advised of the effect a conviction would have on his immigration status.” *Id.* at 279. Sibug’s sentence was vacated, and the court ordered a new trial. *Id.* In September 2008, Sibug was tried once again, and during his testimony “he cited extensively to the

Bible and expressed that he had held a gun on his children to test their faith during the incident in question[.]” *Id.* Sibug was found guilty and defense counsel “requested that the sentencing be delayed in order to accommodate a competency evaluation because ‘Defense attorney in retrospect believes that Mr. Sibug was incompetent to stand trial[.]’” *Id.* at 283. The court ruled that Sibug was competent and sentenced him. *Id.* at 285, 289.

Sibug asked the court to determine if he was denied due process when the trial court failed to find that he was competent prior to trial and whether the court erred in finding him competent at the sentencing hearing. *Id.* at 290. The court explained that “for the purposes of competency at least, a retrial did not renew Sibug’s responsibility to raise the issue of competency prior to trial.” *Id.* at 305. It stated that “on the facts before us [] the tenets of Section 3-104 were engaged during the retrial in 2008, requiring a determination of competency, because Sibug had been adjudicated incompetent in the same case in the same court.” *Id.* at 306–07. The court noted that following the trial court’s finding that Sibug was not competent in 1999, MDH informed the court that it believed Sibug was competent. *Id.* at 315. However, “no court ever found him competent again until after his 2008 trial[.]” and thus, he “was still under the previous finding of incompetence at the time of his 2008 trial.” *Id.* The court emphasized that “the responsibility for a competency determination lies with the court” and stated that “[a] determination made by a psychiatrist is not sufficient[.]” *Id.* It also noted that Sibug’s testimony about extreme religious beliefs coincided with MDH’s original assessment that he was not competent due to “religious delusions[.]” and thus, the court had reason to doubt Sibug’s competency. *Id.* at 318.

Here, the court found that Appellant was not competent in February 2022 but based on the evaluation, the court indicated that he was potentially capable of attaining competency in the future and ordered attainment services to him. In April 2022, another MDH report indicated that Appellant was competent to stand trial. However, no further proceedings were scheduled to address the report. At the hearing on the transfer motion, the court raised the issue of competency to which defense counsel responded that Appellant “was found competent.” The State agreed and the court acknowledged this by stating, “Yes. I wanted to make sure that we did that on the record.”

The court made no other remarks about Appellant’s competency, and we do not construe the court’s statement as a finding of competency. The court did not review any reports, the attorneys did not indicate their respective positions, and the court did not make an assessment or decision. The record is also devoid of any other proceeding where Appellant’s competency was addressed. It appears that the attorneys conveyed that the issue had been addressed by another judge in a previous status hearing, and the court merely relied on the statements made by counsel. However, those statements were inaccurate.

At the July 2022 hearing, alluded to by counsel, the following occurred:

THE COURT: What is the Defense’s position on the Hicks thing?

MS. SAVOY: Your Honor, we are pending we are pending competency in this matter. I believe – I do not believe that there has been – it is a waiver hearing, **but I don’t believe competency has been addressed at this point.**

THE COURT: All right.

MS. SAVOY: So my position is that when there is competency at issue, all the proceedings – or time standards are stayed for essentially –

THE COURT: Well, let’s be careful here and assume, for the sake of argument, that the time standards are not waived. What is the Defendant’s position?

MS. SAVOY: And I am happy to explain to Mr. McBride what Hicks is.

(emphasis added). After defense counsel advised Appellant, he waived his right to a speedy trial.

MS. SAVOY: Is the Court satisfied?

THE COURT: Yes. I am satisfied. Not only that, I am satisfied that there is good cause to postpone the case and postpone it beyond the Hicks date, if the Hicks date applies because the Defendant is not prepared to proceed until a date that would be beyond the Hicks date, to the extent the Hicks date applies. And the lawyers are being careful here. In an abundance of caution, we are addressing the issue. **It may be completely unnecessary because of the competency issue that hangs in the balance.**

(emphasis added).

It is clear that, at that July 2022 status hearing, the court did not make a competency finding. Thus, at the October 2022 motions hearing, competency remained an open issue.

As discussed by the Maryland Supreme Court in *Sibug*, if a defendant has “been adjudicated incompetent in the same case in the same court” then “the tenets of Section 3-104 [are] engaged, requiring a determination of competency[.]” 445 Md. at 306–07. Unlike in *Wood*, here, Appellant did not withdraw his request for a competency evaluation, thereby relieving the court of its obligation to make a finding.

We hold that the court did not make a competency finding at either the July 2022 status hearing or the motion to transfer hearing in October 2022. In fact, there was no competency finding by the court. Accordingly, we reverse the judgment of the court and

remand the case for a hearing on the issue of competency and if appropriate, a hearing on Appellant's motion to transfer jurisdiction.

**JUDGMENT OF THE CIRCUIT  
COURT FOR SOMERSET COUNTY  
REVERSED AND REMANDED FOR A  
PROPER COMPETENCY FINDING;  
COSTS TO BE PAID BY SOMERSET  
COUNTY.**