

Circuit Court for Baltimore City
Case No. 820295003

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1775

September Term, 2023

ALLEN BERNARD BRANCH

v.

STATE OF MARYLAND

Shaw,
Tang,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: November 15, 2024

*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).

This appeal arises from an order granting the State’s motion to reopen a steted case in the Circuit Court for Baltimore City. The appellant, Allen Bernard Branch, presents the following question for our review, which we rephrase as follows:¹

Did the circuit court err in granting the State’s motion to reopen the steted case?

For the reasons below, we shall dismiss the appeal.

BACKGROUND

In August 2020, the appellant was charged in the District Court of Maryland for Baltimore City with one count of fourth-degree sex offense stemming from an incident that occurred on August 7, 2020 (“Case 1”). In October 2020, the appellant requested a jury trial, and the case was transferred to the circuit court.

On March 17, 2022,² the State moved to place the case on the stet docket under Maryland Rule 4-248.³ At that hearing, the prosecutor stated that “the conditions” of the

¹ In his brief, the appellant presented one question with three subparts as follows:

- I. Whether the circuit court committed reversible error by granting [the State’s] motion to reopen stet?
 - A) Whether [the State] had “good cause” to reopen the stet more than one year after its entry?
 - B) Whether appellant fulfilled the terms of the conditional stet and, thereby, was entitled to the entry of a “nol pros”[?]
 - C) Whether subsequent facts establish the lack of good cause and, therefore, reentry of the stet is appropriate?

² The case had been postponed multiple times due to the COVID-19 pandemic.

³ The entry of a stet means that the case is placed on an inactive docket, and the State will not proceed against an accused on the charging document at that time. *Smith v. State*, 16 Md. App. 317, 323 (1972); *see* Md. Rule 4-248(a) (“On motion of the State’s Attorney, the court may indefinitely postpone trial of a charge by marking the charge ‘stet’ on the docket.”).

stet were “that the [appellant] seek the help of behavioral modification or self-elected therapy for a satisfactory period, to notify the State within six months of that, and then the State would enter a nolle pros subsequently.” The appellant stated that he understood the terms of the stet, and he accepted the State’s offer to stet the case:

[THE STATE]: The State was going to place this matter on the STET docket with the conditions, Your Honor. That was communicated to Counsel yesterday.

[DEFENSE COUNSEL]: That is correct, Your Honor. And [the appellant] is prepared to accept that STET.

* * *

[THE STATE]: Your Honor, the conditions are that the [appellant] seek the help of behavioral modification or self-elected therapy for a satisfactory period, to notify the State within six months of that, and then the State would enter a nolle pros subsequently.

THE COURT: All right. Please advise [the appellant].

[DEFENSE COUNSEL]: Mr. Branch, you heard the terms and conditions of the State offering you a STET. A STET is merely placing the case on the inactive docket. It is not a conviction in any way, shape, or form.

You perform the requirement of the condition of the STET, which is [to] get some – a class prepared and a certificate to the State within six months, then it will turn into a nolle pros.

Do you understand the terms of that?

[THE APPELLANT]: Yes, sir, I do[.]

[DEFENSE COUNSEL]: Right. And as we spoke yesterday, the only right you’re waiving is a right to a speedy trial. That is to say, in the time it would take you to do all

these things, or if the State – you fail to do them, and the State brought the case back off the STET docket, you could not then complain that you had your speedy trial rights violated. Do you understand the terms and conditions to the offer of the STET?

[THE APPELLANT]: I do understand the terms and conditions.

[DEFENSE COUNSEL]: All right. It's my understanding you wish to accept that; correct?

[THE APPELLANT]: I wish to accept it, yes, sir.

THE COURT: All right. Thank you, Counsel.

As a result of this colloquy, the case was stettered.

State's Motion to Reopen Stet

On October 4, 2023, the State filed a "Motion to Reopen Stet." *See* Md. Rule 4-248(a) ("A stettered charge may be rescheduled for trial at the request of either party within one year and thereafter only by order of court for good cause shown."). The State acknowledged that the case had been placed on the stet docket over a year ago but argued that there was "good cause" to reopen it. It explained that the case was initially placed on the stet docket because the victim had moved out of state before the scheduled trial date. Although the victim wanted to proceed with the case against the appellant and was willing to travel to Maryland for the trial, she could not make travel arrangements to attend the previously scheduled trial date.

The State also explained that the appellant had since been charged with a separate fourth-degree sex offense and second-degree assault for another incident that allegedly

occurred on January 18, 2023 (“Case 2”). The State asserted that the allegations in Cases 1 and 2 involved the appellant groping “a female stranger[’s] buttocks.”

The circuit court granted the State’s Motion to Reopen Stet on October 11, 2023, before the fifteen-day response time for the appellant had lapsed. *See* Md. Rule 4-252(f) (“A response, if made, shall be filed within 15 days after service of the motion and contain or be accompanied by a statement of points and citation of authorities.”).

On October 13, 2023, the court docketed the appellant’s opposition to the State’s Motion to Reopen Stet, in which he argued that no good cause merited opening the statted case. First, he claimed that he had not waived *Hicks*, and the trial date would now be scheduled on a date that exceeded the 180-day *Hicks* deadline.⁴ Second, the appellant doubted the State’s “witness problem” as the reason for offering to place Case 1 on the stet docket.

Finally, the appellant raised concerns about the timing of the State’s motion. He pointed out that the State could have reopened the stet within one year but chose not to, possibly because the victim in Case 2 did not appear, leading to the entry of a *nolle prosequi* in that case. The State recharged the appellant in Case 2 several months later. The appellant speculated that the State’s attempt to reopen the stet in Case 1 was motivated by vindictiveness, especially since he had refused the State’s plea offer in Case 2.

⁴ Under the “‘Hicks rule,’ a criminal trial in a circuit court must commence within 180 days of the first appearance of the defendant or defense counsel in that court, a deadline known as the ‘Hicks date.’” *Tunnell v. State*, 466 Md. 565, 569 (2020); *see State v. Hicks*, 285 Md. 310, 318 (1979); Md. Rule 4-271.

Apparently realizing that it had ruled on the State’s motion too early, the court issued a separate order on October 25, 2023, acknowledging the appellant’s opposition to the State’s Motion to Reopen Stet and “den[ying]” the opposition.

Appellant’s Motion to Close Reopened Stet

The following day, October 26, the appellant filed a “Motion to Close Reopened Stet.” In the motion, the appellant asked the court to “revisit the issue” of granting the State’s Motion to Reopen Stet. The appellant explained that upon further research, defense counsel discovered that the State had offered to place Case 1 on the stet docket on March 17, 2022, contingent on the appellant completing a behavior modification course. Defense counsel noted that the appellant had completed the course on October 24, 2023 and attached the certificate of completion to the motion. The appellant also argued that the court had prematurely ruled on the State’s motion before he could file his opposition and before the fifteen-day deadline for his response had expired.

On November 16, 2023, the court entered an order summarily denying the appellant’s Motion to Close Reopened Stet.

Notices of Appeal

On November 9, 2023, the appellant filed a notice of appeal from the court’s order granting the State’s Motion to Reopen Stet. On November 27, 2023, the appellant filed a notice of “supplemental appeal” after the court denied the appellant’s Motion to Close Reopened Stet.

DISCUSSION

The appellant argues that the circuit court erred in granting the State’s Motion to Reopen Stet, arguing that “subsequent facts” had emerged that justified denying the motion. One significant development was the appellant’s acquittal of all charges in Case 2 in February 2024. The appellant asserts that since the charges in Case 2 were the sole basis for the State’s Motion to Reopen Stet, the acquittal alone was sufficient to undermine the State’s claim of good cause.

The appellant also contends that fulfilling the conditions of the stet and the absence of a factual connection between Cases 1 and 2 are additional reasons this Court should reverse the circuit court’s decision to grant the State’s Motion to Reopen Stet. He requests that this Court direct the circuit court to either nol pros the charge in Case 1 or reinstate the stet retroactively to its original date of entry on March 17, 2022.⁵

The State reformulated the appellant’s question presented into two issues for our review: (1) whether the circuit court erred in granting the State’s Motion to Reopen Stet; and (2) whether the circuit court erred in denying the appellant’s Motion to Close Reopened Stet. Regarding the first issue, the State contends that the circuit court’s grant of the State’s Motion to Reopen Stet is interlocutory and not immediately appealable. Alternatively, if

⁵ Because we are dismissing the appeal, we need not address the merits of the appellant’s arguments. We note, however, that the appellant cites no legal authority in his brief. We caution against that practice. “Maryland courts have the discretion to decline to address issues that have not been adequately briefed by a party. . . . [A]n appellate court will not search for law to sustain a party’s position.” *Tallant v. State*, 254 Md. App. 665, 689 (2022) (citations omitted); *see also* Md. Rule 8-504(a)(6) (requiring that a brief contain “[a]rgument in support of the party’s position on each issue”).

we decide to address the issue, the State argues that the court had good cause to reopen the stet and did not abuse its discretion in doing so. It highlights that Cases 1 and 2 were related, as both involved allegations that the appellant had assaulted a female stranger in public. Further, the State refutes the appellant's argument based on his subsequent acquittal in Case 2 as a reason to reverse the circuit court's decision to grant the State's Motion to Reopen Stet. This is because appellate review of the circuit court's exercise of discretion is based on the circumstances and arguments before it when it ruled on that motion; the acquittal in Case 2 did not occur until months after the court granted the State's Motion to Reopen Stet.

As for the second issue, the State argues that the appellant failed to fulfill his obligations under the stet agreement. It explained that the agreement did not expressly state when the appellant needed to complete a behavioral modification course or therapy. Citing *Y.Y. v. State*, 205 Md. App. 724, 744 (2012), the State contends that a reasonable time will be implied in the absence of an express time for performing a condition of an agreement. The State noted that more than eighteen months had passed between the entry and reopening of the stet, during which time the appellant failed to provide proof that he satisfied the condition. It was not until October 24, 2023, after the court had already granted the State's Motion to Reopen Stet, that he completed the course. The State argues that the appellant did not complete his obligations under the agreement in a reasonable time, and thus, the circuit court properly denied his Motion to Close Reopened Stet.

A.

Issue Before This Court

In this appeal, the issue is whether the circuit court erred in granting the State’s Motion to Reopen the Stet. In the “Question Presented” section of his brief, the appellant did not present the question of whether the court erred in denying his Motion to Close Reopened Stet. *See* Md. Rule 8-504(a)(3). As we explained in *Green v. North Arundel Hospital Ass’n*, 126 Md. App. 394 (1999), an appellant can waive issues for appellate review by failing to mention them in the “Questions Presented” section of their brief. *Id.* at 426. This is because “[c]onfining litigants to the issues set forth in the ‘Questions Presented’ segment of their brief ensures that the issues presented are obvious to all parties and the Court.” *Id.* (citation omitted). Thus, the court’s denial of the appellant’s Motion to Close Reopened Stet is not before us. *See Moosavi v. State*, 118 Md. App. 683, 705 (1998) (quoting *Hyde v. State*, 228 Md. 209, 218 (1962)) (“[A] question not presented . . . in appellant’s brief was not before the Court . . .”).⁶

⁶ To the extent that the appellant believed that the filing of the notice of “supplemental appeal” was adequate to bring the issue of the circuit court’s denial of the Motion to Close Reopened Stet before this Court, we have explained that the “issues actually presented for appellate resolution are framed by the parties in their briefs, not by the notice of appeal.” *Maxwell v. Ingerman*, 107 Md. App. 677, 682 (1996). As stated, the issue framed by the appellant is whether the court erred in granting the State’s Motion to Reopen Stet. Moreover, the appellant made no argument in his brief that the circuit court erred in denying his Motion to Close Reopened Stet.

B.

Dismissal of Appeal

Turning to the issue that is before us, “[t]he court shall dismiss an appeal if: (1) the appeal is not allowed by these Rules or other law[.]” Md. Rule 8-602(b). It is well settled in Maryland that “an appeal in a criminal case is premature until after final judgment” unless the trial court has denied a constitutional right. *Greathouse v. State*, 5 Md. App. 675, 682 (1969); *see also* Md. Code Ann., Cts. & Jud. Proc. § 12-301 (permitting appeals from final judgment in criminal cases).

An order granting a motion to reopen a stet is “interlocutory in nature and, as such, is not immediately appealable.” *State v. Jones*, 18 Md. App. 11, 32 (1973) (citations omitted). “There are three narrow classes of interlocutory orders from which immediate appeals are permitted: (1) interlocutory orders made immediately appealable by statute; (2) orders in multi-party or multi-claim cases that have been properly certified as final judgments under Maryland Rule 2-602(b); and (3) interlocutory orders that are considered immediately appealable under the collateral order doctrine.” Kevin F. Arthur & Sean R. Luhks, *Final Judgments and Appealable Interlocutory Orders*, in *Appellate Practice for the Maryland Lawyer: State and Federal* 207, 227 (Paul M. Sandler *et al.*, 6th ed. 2023). No statute makes this issue immediately appealable, and Maryland Rule 2-602 is inapplicable here. Thus, we focus on whether this interlocutory order is immediately appealable under the collateral order doctrine.

The collateral order doctrine applies “to a ‘small class’ of cases in which the interlocutory order sought to be reviewed (1) conclusively determines the disputed

question, (2) resolves an important issue, (3) resolves an issue that is completely separate from the merits of the action, *and* (4) would be effectively unreviewable if the appeal had to await the entry of a final judgment.” *Ehrlich v. Grove*, 396 Md. 550, 563 (2007) (emphasis added) (quoting *Dawkins v. Balt. City Police Dep’t*, 376 Md. 53, 58 (2003)). “[T]he four requirements of the collateral order doctrine are very strictly applied, and appeals under the doctrine may be entertained only in extraordinary circumstances.” *In re Foley*, 373 Md. 627, 634 (2003) (citations omitted).

Here, the fourth requirement under the collateral order doctrine is not satisfied. The circuit court’s grant of the State’s Motion to Reopen Stet would be reviewable if the appeal had to await the entry of a final judgment. As a result, we shall dismiss this appeal.⁷ *See*

⁷ One of the appellant’s sub-contentions is that the State should have not proessed Case 1 because the terms of the stet agreement were fulfilled. The State reframes this under its second issue and invites us to evaluate the merits of that claim. However, we decline to do so because the issue before us is whether the circuit court erred in granting the Motion to Reopen Stet. The appellant did not raise the enforcement of the agreement in his opposition to the State’s Motion to Reopen Stet, nor did the court address the issue when it granted the State’s motion.

The satisfaction of the conditions of the stet was not raised until the appellant filed his Motion to Close Reopened Stet, which is not properly before us in this appeal. Even if it were, it is unclear from the record if the court construed the appellant’s motion as a request to enforce an agreement. In his motion, the appellant asked the court to “revisit” the decision to grant the State’s Motion to Reopen Stet for good cause. Thus, the court may have interpreted the appellant’s motion as a request for reconsideration.

A claim to enforce a plea agreement is properly addressed by filing a motion to enforce a plea agreement. *See, e.g., State v. Thompson*, 48 Md. App. 219, 220, 222 & n.1 (1981) (explaining that a stet agreement is a “plea bargain” in the sense that it is an “agreement between the prosecutor and the defendant whereby a defendant agrees to perform some act or service in exchange for more lenient treatment by the prosecutor”). Doing so would make it clear to the circuit court the issue it is asked to decide.

Md. Rule 8-602(b) (mandating that “[t]he court shall dismiss an appeal if: (1) the appeal is not allowed by these Rules or other law”).

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**