

Circuit Court for Cecil County
Case No.: C-07-CR-20-000845

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2252

September Term, 2023

JOHN CHARLES BURCHAM

v.

STATE OF MARYLAND

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 11, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

John Charles Burcham, appellant, appeals from an order by the Circuit Court for Cecil County granting an extension of time for dismissal of his criminal charge. On appeal, Burcham contends that he was denied due process of law and that the court erred by finding “extraordinary cause” to extend the dismissal deadline. For the following reasons, we shall remand the case, without affirmance or reversal, for the circuit court to make further factual findings.

BACKGROUND

On October 1, 2020, Burcham was charged with violating Md. Code Ann., Crim. Law § 3-708(b) for threatening to injure and kill a circuit court judge. Soon after, his counsel filed an “Allegation of Incompetence to Stand Trial.” The court held a hearing on December 18, at which it found Burcham was incompetent to stand trial and was a danger to himself or others, but likely to be restored to competency in the foreseeable future. Accordingly, the court committed him to the Maryland Department of Health.

The court held a series of review hearings over the next three years. Then, in December 2023, Burcham filed a psychological evaluation in which the Department opined that he remained dangerous and incompetent but was no longer likely to be restored to competency in the foreseeable future. The report also suggested that Burcham met the criteria for civil commitment.

The court held another hearing on December 11, 2023—one week before the statutory deadline for mandatory dismissal of Burcham’s misdemeanor charge. The court made dangerousness, incompetency, and non-restorability findings in accordance with the Department’s opinion. At the hearing, Burcham’s counsel brought the impending dismissal

deadline to the court’s attention and urged the court to dismiss the case then and there, otherwise, counsel would file a motion on December 18. The State pointed out that immediate dismissal would be inappropriate because the deadline had not yet passed. It also suggested that it intended to file a motion asking the court to extend the dismissal deadline for “extraordinary cause” under Md. Code Ann., Crim. Proc. (“C.P.”) § 3-107(a). The court agreed that immediate dismissal was premature and denied Burcham’s oral motion.

The same day, the State petitioned to extend time, noting that Burcham had been charged with threatening to harm a circuit court judge, who had sentenced Burcham in a separate case. The petition averred: “[T]he State believes there exists extraordinary cause for the [c]ourt to grant the State an extension before dismissal of this case due to the nature of the allegations and surrounding circumstances which give rise to a public safety concern before a civil commitment is addressed.” Burcham neither responded to the State’s petition, nor moved to dismiss the charge.

On January 3, 2024, the court issued a margin order indicating that it would consider the matter “upon the submission of an appropriate order[.]” It then issued an order the next day finding “extraordinary cause to extend the time before any required dismissal” and granting the State’s petition “for the reasons set forth therein[.]” On January 12, Burcham moved for reconsideration, arguing that he was entitled to notice and an opportunity to be heard related to the dismissal of charges and that there was no extraordinary cause to delay dismissal. The motion suggested Burcham’s counsel was on vacation from December 20 to January 3, and argued that “Burcham should not be precluded from arguing against [the]

extension [because of] Counsel’s failure to object to [the State’s petition] while on vacation.” The State opposed Burcham’s motion, and, on January 16, the court denied it. This appeal followed.

DISCUSSION

Burcham first contends that he was denied due process of law because he was not given adequate notice and an opportunity to be heard before the circuit court granted the State’s petition. We are not persuaded.

At its core, “due process is the right to notice and a meaningful opportunity to be heard.” *Roberts v. Total Health Care, Inc.*, 349 Md. 499, 509 (1998) (cleaned up). Here, the State filed its petition on December 11, 2023. Burcham does not contend he was not properly served with the petition. To be sure, Burcham’s counsel was on vacation starting December 20. But even so, he had more than a week to either oppose the petition or seek an extension of time to do so. What is more, the court waited more than three weeks after the petition was filed before ruling on it. And, in any event, Burcham was, in fact, heard by way of his motion for reconsideration in which he urged the court to conclude that there was not cause for a dismissal extension. The court considered his motion before ultimately denying it. It, therefore, did not deny Burcham due process of law.

Burcham next contends the court erred by finding “extraordinary cause” to extend the dismissal deadline. The State contends we are unable, at this time, to determine the merits of this contention and should remand the case for further fact-finding. We agree with the State.

A court may order a pretrial criminal commitment to the Department of Health only until it finds that “there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future.” C.P. § 3-106(c)(1)(i)(3). Then, the court shall civilly commit the defendant as an inpatient in a medical facility that the Health Department designates if the court finds by clear and convincing evidence that:

- “[T]he defendant has a mental disorder;”
- “[I]npatient care is necessary for the defendant;”
- “[T]he defendant presents a danger to the life or safety of self or others;”
- “[T]he defendant is unable or unwilling to be voluntarily committed to a medical facility;” and
- “[T]here is no less restrictive form of intervention that is consistent with the welfare and safety of the defendant.” C.P. § 3-106(e)(1).

At the December 11, 2023, hearing, the circuit court made dangerousness, incompetency, and non-restorability findings in accordance with the Department’s opinion. In doing so, it triggered C.P. § 3-106(c)(1)(i)(3). But the court did not make the findings mandated by C.P. § 3-106(e)(1) that make civil commitment possible because the State timely petitioned to extend the dismissal deadline for “extraordinary cause.”

Extraordinary cause means a reason “beyond that which is ordinary, usual[,] or commonplace[.]” *Ray v. State*, 410 Md. 384, 406 (2009). In the context of incompetency to stand trial, it “must require more than dangerousness and restorability[.]” *Id.* at 419. To justify finding extraordinary cause, the State averred (and the court adopted by reference): that the “nature of the allegations” and the “surrounding circumstances” created a “public

safety issue” that must be resolved before consideration of any civil commitment. We cannot discern from the record what those circumstances are or why they must be addressed before consideration of any civil commitment. In other words, the court’s findings were in the proper form, but their substance is lacking. As a result, we cannot meaningfully determine the merits of the case. Likewise, we are unable to evaluate whether Burcham can be civilly committed because the court did not consider the factors under C.P. § 3-106(e)(1). Accordingly, we will remand the case for additional fact-finding under C.P. §§ 3-106(e)(1) and 3-107(a). *See Hogle v. State*, 252 Md. App. 124, 128, 147–48 (2021).

CASE REMANDED WITHOUT AFFIRMANCE OR REVERSAL TO THE CIRCUIT COURT FOR CECIL COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.