

## Thursday, November 12, 2009

### [Court of Appeals of Maryland Finds No Bad Faith, Reverses Circuit Court's Dismissal of Second Indictment](#)

*State v. Huntley*, Record No. 157 (Court of Appeals of Maryland, Sept. Term, 2008)

In an opinion filed November 12, 2009, the Court of Appeals of Maryland held that Mr. Huntley's right to be tried within 180 days (pursuant to Md. Rule 4-271 (a) (1) and *State v. Hicks*, 285 Md. 310 (1979)) was not violated where, after the circuit court denied its motion to amend the indictment, the State "nol prossed" and re-indicted the case.

Mr. Huntley was indicted for child sexual abuse. The parties appeared for trial one day before the Hicks deadline. The State, proffering that it had just recently learned that the offense dates set forth in the indictment were incorrect, moved to amend the dates on the indictment. The circuit court denied the request.

The State therefore entered the charges *nolle prosequi* and re-indicted the defendant outside of the original "Hicks date." Mr. Huntley filed a motion to dismiss the second indictment, arguing that the re-indictment violated *Hicks* and Rule 4-271. The circuit court granted the motion and the State appealed. The Court of Appeals took *certiorari* on the issue from the Court of Special Appeals.

Citing *Curley v. State*, 299 Md. 449 (1984), the Court noted that a *nolle prosequi* and re-indictment of a defendant does not implicate *Hicks* unless its purpose or its necessary effect "is to circumvent the statute and rule governing time limits for trial..." The Court went on to hold that, where the State "nol prosses" an indictment because its motion to amend the indictment was denied, *Curley*, *Hicks*, and Md. Rule 4-271 do not require dismissal of the subsequent indictment unless the State proceeded in bad faith. Finding the record devoid of bad faith, the Court reversed and remanded the case to the circuit court to determine whether the State had proceeded in bad faith.

Chief Judge Bell and Judge Greene dissented to the opinion, essentially arguing that, because the State had other options (*e.g.*, asking the administrative judge for a postponement) and didn't exercise them, bad faith on the part of the State was apparent from the record.

Posted by [Brennan Sullivan and McKenna](#)