Circuit Court for Talbot County
Case No. 20-K-15-010952

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1226

September Term, 2016

DAMAR A. RINGGOLD

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Leahy,
Alpert, Paul E.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Leahy, J.

Filed: August 24, 2017

On March 7, 2016, in the Circuit Court for Talbot County, a jury convicted Damar A. Ringgold ("Appellant") of various charges stemming from an attempted traffic stop that resulted in Appellant committing a hit-and-run, and ultimately, the recovery by police of ethylone and marijuana that was in Appellant's possession. On July 26, 2016, the court imposed a sentence of twelve months incarceration for each of the eight counts on which Appellant was convicted, to be served concurrently, and with nine months suspended. Appellant filed a timely notice of appeal to this court, raising one issue:

> "Did the trial court fail to comply with Md. Rule 4-215(e) governing discharge of counsel?"

We conclude that the circuit court failed to comply with its mandatory obligation under Maryland Rule 4-215(e) because the court did not allow Appellant to explain his reasons for requesting discharge of his counsel. We must reverse Appellant's convictions and remand for a new trial.

BACKGROUND

Because this case turns on a procedural issue, we recite an abbreviated account of the facts elicited at Appellant's trial.

On April 3, 2015, at approximately 8:54 p.m., a uniformed Easton police officer driving a marked patrol vehicle observed a green Oldsmobile driving in the opposite direction without the registration plate attached to the front of the vehicle. The officer testified that he turned around to follow the vehicle and determined that the Oldsmobile was registered in Maryland. The officer activated his emergency lights, and the Oldsmobile struck an unattended white SUV parked on the street. The Oldsmobile

continued moving until it struck a utility pole and stopped, at which point Appellant jumped out of the car and ran. The officer testified that as he pursued Appellant on foot, he observed Appellant's hand in his pocket for a brief time, and then saw him drop "a white Tupperware container … [w]ith a red top."

The officer apprehended Appellant and then recovered a sandwich bag with "plant like material" and a storage container with "two whitish rocks" from the area where the officer saw Appellant throwing the items. Suspecting that both were controlled dangerous substances, the officer conducted a "reagent NIK" field test, which resulted in a positive alert for crack cocaine, and a separate kit for a marijuana field test, which also resulted in a positive alert. Subsequent laboratory tests revealed that the substances were marijuana and ethylone.

The facts pertinent to the procedural issue in this appeal occurred on March 7, 2016—the morning of Appellant's trial. Before the parties began jury selection, the following colloquy occurred:

> [DEFENSE COUNSEL]: Your Honor, may we approach the Bench before we.
>
> THE COURT: Okay, you may approach.
>
> THE COURT: Yes, sir.
>
> [DEFENSE COUNSEL]: Your Honor, I think my client wants to address the Court.
>
> THE COURT: Okay.
>
> [APPELLANT]: Your Honor, Yes, I just wanted to know if I could get another representation. I don't really feel as though…

> THE COURT: Well this is the morning of trial. You're either going to go with [defense counsel] or you're going to represent yourself. [Defense counsel] has been your attorney. The last time you were before me was January 8th, and you needed a continuance because you didn't understand the plea agreement and the time, you know, that ship has sailed, okay?
>
> [DEFENSE COUNSEL]: You don't want to represent yourself do you son? He's not going to let me out of the case, so. I have to stay here, the Judge will not let me (inaudible). So the other…
>
> [APPELLANT]: (Inaudible).
>
> [DEFENSE COUNSEL]: Your Honor, on the record, while we're waiting for the jury. Your Honor, I have made several attempts to talk with my client. We have a communication problem. He obviously wants another attorney and I understand that and so I just want it on the record that I made every attempt I can, correspond, with him, phone calls, asked him to meet with me in my office, went to his work. He just doesn't want to talk to me and represent the case. I think he's lost all confidence in me as an attorney. I understand what your ruling is but I would respectfully.
>
> [THE COURT]: I mean we're here, the rule 4-214(d) requires 10 days notice to the client. We're here the morning of trial. This case is going to continue. This case is dragging out. We're going to trial today and you're going to represent him.
>
> [DEFENSE COUNSEL]: Okay, I understand.

The trial proceeded that day as scheduled, with counsel representing Appellant. The jury returned its verdict, finding Appellant guilty on the following charges: (1) possession of ethylone; (2) possession of marijuana; (3) obstructing and hindering a police officer; (4) failure to stop after unattended vehicle property damage; (5) failure of driver in accident to locate and notify the owner; (6) failure to attach vehicle registration plates at front and rear of vehicle; (7) attempt by driver to elude uniformed police officer by fleeing on foot; and (8) attempt by driver to elude police officer in official police vehicle by fleeing on foot.

The court imposed concurrent sentences for all counts, totaling twelve months incarceration, with nine months suspended. The court also permitted work release on the three months to be served. Appellant noted his appeal to this Court on August 25, 2016.

DISCUSSION

Appellant argues that the circuit court violated Maryland Rule 4-215(e) when it failed to allow him to explain his reasons for seeking to discharge counsel. The State agrees with Appellant, and based on our independent review of the record, so do we.

The Sixth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights "'guarantee a right to counsel, including appointed counsel for an indigent, in a criminal case involving incarceration.'" *Broadwater v. State*, 401 Md. 175, 179 (2007) (quoting *Parren v. State*, 309 Md. 260, 262 (1987)). Two independent constitutional rights stem from these provisions: the accused in a criminal prosecution "has both the right to have the assistance of counsel and the right to defend *pro se*." *Snead v. State*, 286 Md. 122, 123 (1979); *see also Faretta v. California*, 422 U.S. 806, 819 (1975) ("The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense."). The Court of Appeals adopted Maryland Rule 4-215 to implement these constitutional guarantees. *Williams v. State*, 321 Md. 266, 271 (1990). To protect a defendant's right to discharge counsel, Rule 4-215(e) stipulates:

(e) Discharge of Counsel – Waiver.

> **If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request.** If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel.

Md. Rule 4-215(e) (emphasis added).

"When applicable, Rule 4-215(e) demands strict compliance." *State v. Hardy*, 415 Md. 612, 621 (2010). "'The provisions of the rule are mandatory[,]' and a trial court's departure from them constitutes reversible error." *Id.* (quoting *Williams*, 321 Md. at 272). Accordingly, "[w]e review de novo whether the circuit court complied with Rule 4-215." *Gutloff v. State*, 207 Md. App. 176, 180 (2012).

The question here is whether the trial court violated Rule 4-215(e) when it did not inquire into Appellant's reasons for seeking to discharge his counsel. The Court of Appeals in *State v. Davis* held that "failure to inquire into a defendant's reasons for seeking new counsel when the proper request has been made to the court is a reversible error." 415 Md. 22, 31 (2010) (citing *Snead*, 286 Md. at 131); *see also Joseph v. State*, 190 Md. App. 275, 285, 288 (citation omitted) (finding a violation of Rule 4-215 when the court "did not ask for or consider appellant's reasons for wanting to [discharge his counsel] before denying the request.").

The Court of Appeals illustrated the application of its standard in *Williams*. Before

trial, Williams stated, "I want another representative." *Williams*, 321 Md. at 267. The circuit court, however, declared that trial would proceed as planned. *Id.* at 268. On appeal, the Court of Appeals agreed with Williams that the circuit court violated rule 4-215(e) because it did not permit him to explain his reasons and thus, the circuit court had no basis on which to deny Williams's request. *Id.* at 274. The Court then ordered a new trial. *Id.*

Here, Appellant informed the court that he desired to discharge counsel by expressly stating, "Your Honor, yes, I just wanted to know if I could get another representation. I don't really feel as though[.]" As Appellant's statement is nearly identical to that in *Williams*, it is sufficient to trigger Rule 4-215(e)'s protocol requiring a trial court to inquire into the reasons for requesting discharge. *See id.* at 267. Instead of providing a forum for Appellant to voice his concerns, however, the circuit court interrupted his statement, declaring, "Well this is the morning of trial. You're either going to go with [defense counsel] or you're going to represent yourself." Defense counsel followed up Appellant's request with the explanation that "[h]e obviously wants another attorney . . . I think he's lost all confidence in me." The court again, rather than inquire into the Appellant's reasons for seeking to discharge counsel, responded, "We're here the morning of trial . . . We're going to trial today and you're going to represent him." Appellant and his attorney's statements, made pre-trial, were sufficient to require the court to conduct an inquiry under Maryland Rule 4-215(e). As in *Williams*, the circuit court here failed to satisfy this requirement because it did not conduct an inquiry and thus had no foundation on which to base its decision. *See id.* at 274. Accordingly, as the Rule requires strict compliance once

a proper request is made, we must reverse Appellant's convictions and remand for a new trial.

JUDGMENTS REVERSED.
CASE REMANDED TO THE CIRCUIT COURT FOR TALBOT COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY TALBOT COUNTY.