

Circuit Court for Dorchester County
Case No. 09-K-15-015743

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1253

September Term, 2016

TIMOTHY FORTUNE SPICER

v.

STATE OF MARYLAND

Woodward, C.J.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 2, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Timothy Spicer, appellant, was convicted by a jury sitting in the Circuit Court for Dorchester County, of two counts of possession of a controlled dangerous substance, and two counts of possession of a controlled dangerous substance with intent to distribute. On appeal, Spicer claims that the trial court failed to comply with the requirements of Md. Rule 4-215(e) in considering his pre-trial request to discharge counsel, because “the court never made a determination as to whether the reasons given by Appellant for wishing to discharge counsel were meritorious.” Spicer also requests that we review, for plain error, his unpreserved claim that the trial court erred in ruling that a prior conviction was admissible for impeachment purposes. For the following reasons, we affirm.

On April 1, 2016, one week before the trial was scheduled to begin, defense counsel filed a written request to strike his appearance, stating that Spicer requested that he withdraw from the case because Spicer believed that defense counsel was not representing him properly. A hearing on the request was held three days later.

Maryland Rule 4-215(e), which governs the procedure a court must follow when a criminal defendant asks to discharge his or her attorney, provides:

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. If the court permits the defendant to discharge counsel, it shall comply with

subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

At the outset of the hearing on the request to discharge counsel, the circuit court asked Spicer to “show me a good reason” why he wanted to discharge his attorney. In a lengthy colloquy that spans 20 pages of transcript, Spicer stated that defense counsel had not obtained information that Spicer asked him to get; had not contacted witnesses; and had not complied with Spicer’s request that he be given a lie detector test, which, Spicer claimed, would have exonerated him.

The court addressed these concerns with both Spicer and defense counsel, and asked Spicer about his plans for legal representation if the request to discharge counsel was granted. Spicer informed the court that he did not have money to hire another attorney.¹ The court then asked, several times, whether he would then apply to the Office of the Public Defender for representation. When Spicer replied “I guess[,]” the court advised him that “the other alternative is you represent yourself.” Spicer then stated, “I might have to represent myself[,]” because defense counsel had “said something about [the Public Defender’s Office] would not take [his] case[.]”

After addressing the concerns that Spicer expressed, and confirming that he had no other issues with the job defense counsel was doing, the following colloquy occurred between the court and Spicer:

THE COURT: So Mr. Spicer, I’m going to ask you now; do you want to discharge Mr. Maloney? Once he’s gone, he’s gone.

¹ Spicer’s grandfather, who had been paying defense counsel, had recently died.

SPICER: I don't know what to do, Your Honor, to tell you the truth.
But if he – if you –

THE COURT: So you don't want him discharged?

SPICER: If you just – it doesn't even matter. Whatever, I guess. Go ahead and let him represent me.

THE COURT: All right.

SPICER: Because I just, you know, I just want to get to the truth.

THE COURT: Okay.

SPICER: That's all I want to do, is get to the truth

THE COURT: All right, So Mr. Maloney, what I'm going to do is
I'm going to deny your request to withdraw –

(Emphasis added).

We see no failure to comply with Rule 4-215(e). Consistent with the provisions of the rule, the court gave Spicer ample opportunity to fully explain his reasons for wanting to discharge defense counsel, and the record reflects that the court carefully considered his concerns. Spicer does not claim otherwise. He asserts only that “the court never made a determination as to whether the reasons given by Appellant for wishing to discharge counsel were meritorious.”

We conclude that the court was not required to make such a finding. At the end of the lengthy hearing, after the court had listened to and addressed Spicer's concerns, the court asked whether Spicer still wished to discharge defense counsel, and Spicer affirmatively withdrew his request to discharge counsel by asking the court to “go ahead

and let him [defense counsel] represent me.”² At that point, the request was no longer before the court for consideration, and there was no need for the court to make a determination on the merits. *See Williams v. State*, 435 Md. 474, 491 (2013) (stating that “to trigger Rule 4–215(e)” the defendant must indicate a “present intent to seek a different legal advisor.”) (citation omitted)).³

Spicer concedes that he “opted to keep his current attorney[,]” but asserts that his decision was not “knowing and voluntary.” He claims that, “because the court never made a determination” whether the reasons for the request were meritorious, the court failed to give him “meaningful guidance about the consequences of discharging [defense counsel] and moving forward.” He also suggests that the trial court “effectively communicated” to him that “if his request for discharge were granted, his only option would be to represent himself[.]” We see no support for this contention in the record. It is clear from the colloquy between the circuit court and Spicer, that Spicer understood that if he had maintained his

² Trial went forward two weeks after the hearing on the request to discharge counsel. There is no indication in the record that Spicer expressed continued dissatisfaction with defense counsel or renewed his request to discharge counsel.

³ Had the court been obliged to make a determination as to whether there was a meritorious reason to discharge counsel, we note that Rule 4-215(e) does not require an explicit finding. When a Rule requires an explicit finding, it is reflected in the plain language of the Rule. *See e.g.* Md. Rule 4-215(b) (waiver of counsel may not be accepted unless “the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel.” (emphasis added); Md. Rule 4–246(b) (requiring that waiver of a jury trial may not be accepted unless “the court determines and announces on the record that the waiver is made knowingly and voluntarily” (emphasis added). Rule 4-215(e) contains no such language.

intent to discharge counsel, and the court had granted his request, his options were to hire private counsel, request representation from the Office of the Public Defender, or represent himself.⁴

Finally, we decline Spicer’s request that we review, for plain error, his unpreserved claim that the court erred in ruling that a prior conviction was admissible for impeachment purposes. “Appellate courts will exercise their discretion to review an unpreserved error under the plain error doctrine only when the unobjected to error [is] compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial[,]” and such review is a “rare, rare phenomenon.” *Pickett v. State*, 222 Md. App. 322, 340 (2015) (citation and internal quotation marks omitted). This is not one of those rare cases that warrants plain error review.

**JUDGMENTS OF THE CIRCUIT COURT
FOR DORCHESTER COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

⁴ Spicer’s comment that defense counsel “said something about [the Public Defender’s Office] would not take [his] case,” did not impose any additional obligation on the court under Rule 4-215(e).