UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0003

September Term, 2014

DONTA VAUGHN

v.

STATE OF MARYLAND

---

*Zarnoch,
Graeff,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: October 13, 2015

*Zarnoch, Robert A., J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

FACTUAL AND PROCEDURAL HISTORY

Donta Vaughn ("Vaughn") was charged with first-degree felony murder, first-degree murder, conspiracy to commit first-degree murder, kidnapping, conspiracy to commit kidnapping, extortion, conspiracy to commit extortion, false imprisonment, and conspiracy to commit false imprisonment.[1] Before the trial commenced, Vaughn indicated that he wished to waive his right to counsel and represent himself. The trial court held a hearing regarding his waiver of counsel, during which the following exchange took place:

> THE COURT: Mr. Vaughn, you are aware of the charges that are pending in this matter.
>
> [Vaughn]: Yes, sir.
>
> THE COURT: Is that correct?
>
> [Vaughn]: Yes, sir.
>
> THE COURT: Could you tell me what you understand that they are, just what you understand you're accused of? I'm not asking you to admit anything. But so that I can verify you really, truly do appreciate the nature of the charges that have been filed.
>
> [Vaughn]: I'm charged with first-degree murder—
>
> THE COURT: Okay.
>
> [Vaughn]: —a conspiracy charge to that count; kidnapping, the conspiracy to that count; verbal extortion and the conspiracy to that count.

[1] Vaughn's appeal was consolidated with that of his co-defendant Darryl Nichols (Case #169, September Term 2014) for the purpose of briefing and oral arguments but the decisions will be issued in separate opinions.

THE COURT: All right. And you understand the potential penalties include a sentence of up to life in prison—

[Vaughn]: Yes, sir.

THE COURT: —if you're convicted of the murder charges?

The circuit court then allowed Vaughn to represent himself. He was acquitted of kidnapping, conspiracy to commit kidnapping, first-degree murder, and conspiracy to commit first-degree murder but convicted of first-degree felony murder, extortion, conspiracy to commit extortion, false imprisonment, and conspiracy to commit false imprisonment. He was acquitted of kidnapping, conspiracy to commit kidnapping, first-degree murder, and conspiracy to commit first-degree murder.

DISCUSSION

Maryland Rule 4-215 sets forth the required steps that a trial court must take before allowing a defendant to effectively waive the right to an attorney. The Rule says:

> **(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 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.

If the trial court determines that a defendant has a "meritorious reason" for discharging counsel, then court must follow the four steps outlined in 4-215(a)(1)-(4), which require the court to:

> (1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.

> (2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.
>
> (3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.
>
> (4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.

Subsection (a)(4), then directs the trial court to subsection (b). Subsection (b) requires the court to conduct an examination for the defendant to determine "and announce[] on the record that the defendant is knowingly and voluntarily waiving the right to counsel." All stages of this process must be adequately reflected in the record.

Vaughn argues that the trial court erred in fulfilling the obligations of Rule 4-215 in six ways[2] and the State explicitly concedes three of these.[3] Due to the fundamental nature of a defendant's right to effective assistance of counsel, strict compliance with all the requirements of Rule 4-215 is mandatory. *Webb v. State*, 144 Md. App. 729, 740 (2002)

[2] Vaughn claims that the trial court violated Rule 4-215 by: (1) failing to explicitly determine Vaughn's reasons for discharging counsel or whether they were meritorious; (2) failing to place, on the record, that it complied with subsections (a)(1)-(4); (3) failing to ensure that Vaughn received a copy of the charging document containing notice as to the right to counsel; (4) failing to inform Vaughn or the right to counsel and of the importance of assistance of counsel; (5) failing to advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties; and (6) failing to note compliance with Rule 4-215 in the docket.

[3] The State concedes that the trial court violated Rule 4-215 by (1) failing to determine the reasons for Vaughn's request to discharge his counsel, and (2) failing to advise Vaughn of his charges, their allowable penalties, and the importance of counsel; (3) failing to note compliance with Rule 4-215 in the record.

("Rule 4-215 is a bright line rule, which sets forth precise procedures to be followed by the court") (internal citation omitted). "The plain language of Rule 4-215 directs that only full compliance by the trial court will suffice, and the record must reflect such compliance. *Id*. at 741. Because the failure to follow even one of these steps constitutes reversible error and requires a new trial, we need only discuss the errors the state concedes. *Moten v. State*, 339 Md. 407, 409 (1995) (reversing a defendant's conviction when the trial court failed to advise defendant of the allowable penalties of the charged crimes).

First, the circuit court did not advise Vaughn of all the charges pending against him. When the trial court asked Vaughn if he was aware of the nature of the charges against him, Vaughn stated that he was charged with "first-degree murder … a conspiracy charge to that count; kidnapping, the conspiracy to that count; verbal extortion and the conspiracy to that count." Vaughn failed to mention the charges relating to felony murder and false imprisonment, and the circuit court did not correct his omission. "Maryland appellate courts demand strict, not substantial, compliance with [Rule 4-215] in order to find waiver." *Webb*, 144 Md. App. at 741. Therefore, the circuit court failed to strictly comply with Rule's requirement to adequately ensure that Vaughn was aware of the nature of *all* the charges against him.

Second, the trial court did not inform Vaughn of the possible penalties if convicted, other than the possibility of life in prison for murder. Rather, the trial court merely asked Vaughn the following:

THE COURT: All right. And you understand the potential penalties include a sentence of up to life in prison—

[Vaughn]: Yes, sir.

THE COURT: —if you're convicted of the murder charges?

[Vaughn]: Yes.

Under Rule 4-215, the trial court must make a defendant who is discharging counsel aware of *all* possible penalties for all of the charged crimes. *State v. Camper*, 415 Md. 44, 57 (2010) (holding that the trial court needed to inform the defendant of enhanced penalties for subsequent offenses, even where the defendant may have had knowledge of these penalties). When Vaughn waived his attorney, the circuit court only inquired if Vaughn knew the possible penalty for one of the charges: life imprisonment for murder. The circuit court, therefore, failed to ensure that Vaughn was aware of the possible punishments for all of the charges against him.

Third, the required advisements listed in Subsections (a)(1)-(4) were not placed on the record as required by the Rule. There is no evidence on the record from which we can be certain that Vaughn knew of all of the crimes with which he was charged or the nature of the charges. Further, there is no evidence that Vaughn had adequate knowledge of the possible penalties for eight of the nine charges against him.

For all these reasons, the circuit court did not comply with the requirements of Rule 4-215, and Vaughn is entitled to a new trial on all counts for which he was not acquitted.

CONCLUSION

For the reasons stated, we hold that all of Vaughn's convictions are vacated and this case is remanded for further proceedings consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED AND REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.