

Circuit Court for Washington County
Case No. C-21-CR-21-000164

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 21

September Term, 2023

ROGER ERNEST HEARE, JR.

v.

STATE OF MARYLAND

Arthur,
Tang,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 22, 2023

*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.

Following a jury trial in the Circuit Court for Washington County, at which he represented himself, Roger Ernest Heare, Jr., appellant, was convicted of first-degree assault, second-degree assault, reckless endangerment, and false imprisonment. On appeal, appellant raises two issues: (1) whether the court violated Maryland Rule 4-215 when it permitted him to discharge his appointed counsel prior to trial, and (2) whether the court erred in imposing separate sentences for first-degree assault and reckless endangerment. The State concedes that the court did not fully comply with Rule 4-215 and therefore, that reversal is required. For the reasons that follow, we shall reverse the judgments of the circuit court.

On the morning of trial, appellant informed the court that he wanted to discharge his court appointed counsel and obtain a panel attorney. He also stated, however, that he was exercising his speedy trial rights and did not want to continue his case. After learning that there was a panel attorney who had agreed to represent appellant, but who was out of town and would not be able to represent him without a continuance, the court stated that appellant could either proceed to trial with his current attorneys, obtain a continuance so that the panel attorney could be appointed, or discharge his court appointed counsel and proceed *pro se*. After further discussion, appellant indicated that he wished to discharge his appointed counsel and proceed to trial. The court then found that appellant did not have a meritorious reason to discharge counsel, but that he had “been warned of the dangers and disadvantages of representing” himself and that he had “knowingly and voluntarily waived [his] right to have an attorney represent [him].” After permitting him to discharge counsel,

the court went over the charges listed in the charging documents. It did not, however, advise appellant regarding the potential penalties for those offenses.

On appeal, appellant contends that the court erred in: (1) failing to comply with the requirements of Maryland Rule 4-215(a)(3); (2) finding that he had knowingly waived his right to counsel; and (3) finding that his reasons for discharging counsel were unmeritorious. The State agrees that the court failed to comply with the requirements of subsection (a)(3), as do we.

Maryland Rule 4-215(e) outlines the procedures a court must follow when a defendant desires to discharge his counsel to proceed *pro se* or to substitute counsel. Specifically, the Rule 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.

Md. Rule 4-215(e).

Maryland Rule 4-215(a), which is embodied in Rule 4-215(e), “implements the constitutional mandates for waiver of counsel, detailing a specific procedure that must be followed by the trial court in order for there to be a knowing and intelligent waiver.”

Richardson v. State, 381 Md. 348, 367 (2004) (quotation marks and citations omitted). Under that Rule, before the defendant can discharge counsel, the court must ensure that the defendant has received a copy of the charging document; inform the defendant of his right to counsel and the importance of counsel; and advise the defendant of the nature of the charges and the allowable penalties. Md. Rule 4-215(a)(1)-(3).

The Supreme Court has stated that “the Maryland Rules are precise rubrics” and that “the mandates of Rule 4-215 require strict compliance.” *Pinkney v. State*, 427 Md. 77, 87 (2012). “Thus, a trial court’s departure from the requirements of Rule 4-215 constitutes reversible error.” *Id.* at 88. We review a trial court’s interpretation and implementation of Rule 4-215 *de novo*. *Id.*

When the court permitted appellant to discharge counsel on the morning of trial, it did not advise him of the allowable penalties as to any of the charges he was facing. And although compliance with Rule 4-215 may be effectuated by the circuit court during different proceedings, the record does not reflect that appellant was advised of those penalties at any other time while his case was pending in the circuit court. Because compliance with Rule 4-215 is mandatory, appellant’s convictions must therefore be reversed.¹

**JUDGMENTS OF THE CIRCUIT
COURT FOR WASHINGTON COUNTY**

¹ Because we hold that the court failed to comply with Maryland Rule 4-215(a)(3), we do not address appellant’s claims that the court also erred in finding that his waiver was involuntary and in finding that his reasons for discharging counsel were unmeritorious. Moreover, we do not address appellant’s second contention on appeal, that his sentences for first-degree assault and reckless endangerment should have merged under the rule of lenity, as our reversal of his convictions renders this issue moot.

**REVERSED. COSTS TO BE PAID BY
WASHINGTON COUNTY.**