Circuit Court for Washington County
Case No. C-21-CR-18-000594

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0726

September Term, 2019

CHARLES KENNETH WALKER

V.

STATE OF MARYLAND

Leahy,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: October 14, 2020

The appellant, Charles Kenneth Walker, was convicted by Judge Brett R. Wilson in the Circuit Court for Washington County of 1) the possession of cocaine with the intent to distribute, 2) the simple possession of cocaine, and 3) the possession of drug paraphernalia. On this appeal, he raises the two contentions:

1. That in a pre-trial arraignment before Judge Mark K. Royer, Judge Royer erroneously "fail[ed] to comply with the procedure set forth in Snead v. State regarding self-representation," and

2. That Judge Wilson erroneously failed to announce formal verdicts with respect to the second and third counts, charging simple possession and possession of drug paraphernalia.

At a pre-trial arraignment on November 20, 2018, the appellant informed Judge Royer that he wanted to discharge his assigned public defender. The court allowed the appellant to explain his reasons for wishing to discharge his lawyer. At one point, Judge Royer asked the appellant what he would do if the court allowed him to fire his assigned public defender, "What are you going to do for an attorney?" The appellant responded that if he could not get another attorney, he would have to represent himself. Judge Royer ruled as follows:

> THE COURT: All right. Sir, the case is not going to proceed today. There is another jury trial proceeding in this courthouse today, it's ahead of yours. So your case is not proceeding today. The fact that you've seen [defense counsel] it looks like three different occasions since the Public Defender's Office entered their appearance on August 14th – once was at the jail, twice were here, here in the courthouse. And I can understand that you're not happy, and I guess this is the -- I think this is the fourth time you've seen [defense counsel] today. I understand you're not happy because you want to see him more frequently, but your case is not scheduled for trial today and it's going to be continued today by this Court. So I do not find that you have any meritorious reason for terminating the services of [defense counsel] and the Public Defender's Office. So your request is denied.

(Emphasis supplied.)

The flaw in the appellant's argument is that he believes, based on that brief exchange between himself and Judge Royer, that he was entitled to all of the advisements spelled out in Snead v. State. Snead, 286 Md. 122, 406 A.2d 198 (1979), was a 1979 decision by the Court of Appeals based on the Supreme Court opinion of Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), dealing with a defendant's right of self-representation. Both Faretta and Snead made it clear that if a defendant clearly wanted to represent himself, a further inquiry was required. As Snead explained, 286 Md. at 127-28:

> When the defendant so indicates a desire to defend pro se, the court must, by appropriate inquiry, determine whether he "truly wants to do so." Faretta 422 U.S. at 817. This inquiry has two phases. First, the court should ascertain whether the defendant "clearly and unequivocally" wants to defend himself. If a defendant makes known to the court, admitting of no doubt or misunderstanding, that he desires to represent himself, the right to do so has been properly asserted.

(Emphasis supplied.)

The appellant argues in his brief that the court here failed to abide by the dictates of Snead and Faretta.

> Here, Mr. Walker indicated a desire to represent himself or "defend pro se," but the court failed to conduct an appropriate inquiry to determine whether he truly wanted to do so. Because the court did not follow up on Mr. Walker's statement and inquire about his expressed desire for self-representation, the court failed to ascertain whether Mr. Walker "clearly and unequivocally" wanted to defend himself. Instead, the court failed to address self-representation at all and ruled that because Mr. Walker's reasons for wanting to discharge his assigned counsel were unmeritorious, his request to discharge counsel was denied.

(Emphasis supplied.)

The fatal flaw in the appellant's reasoning is that Snead does not apply to this case. Snead and Faretta dealt with the situation where the defendant clearly and unequivocally desired self-representation. This is not such a case. The appellant erroneously relies on the appellant's response when asked what he would do if the court allowed him to fire his assigned public defender. Judge Royer asked, "What are you going to do for an attorney?" the appellant responded that if he could not get another attorney, he would have to represent himself. That is not an aspiration. That is mere resignation. This is not Faretta, 422 U.S. at 835, where "weeks before trial, Faretta clearly and unequivocally declared to the trial judge that he wanted to represent himself and did not want counsel." This is not Snead, 286 Md. at 124, where the Court of Appeals spoke of "a nearly universal conviction [that] forcing a lawyer on an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so."

The controlling law in this case is Maryland Rule of Procedure 4-215(e), dealing with the discharge of counsel.

> **(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. 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.

(Emphasis supplied.)

In this case, the appellant actually went to trial with the assigned public defender that he had not been permitted to discharge.

The appellant's claim that Judge Royer was required to inquire as to whether the appellant wanted to represent himself is squarely belied by Pinkney v. State, 427 Md. 77, 46 A.3d 413 (2012). In Pinkney, the defendant filed a pretrial motion asking to discharge his assigned public defender. The motion was denied. At trial, the defendant renewed his complaint, arguing that his lawyer was ineffective. The trial court again determined that the motion lacked merit and the defendant, as here, went to trial represented by the assigned public defender. Following his conviction, Pinkney argued on appeal that, pursuant to Rule 4-215(e), the court should have given him the option of representing himself. The Court of Appeals, 427 Md. at 89-90, flat out rejected that argument.

> The plain and unambiguous language of the Rule does not require the trial judge to inform a defendant of the option to proceed *pro se* when the judge determines that the defendant's reasons for requesting discharge of counsel are not meritorious, the judge subsequently denies the defendant's request, and the defendant has not made a statement sufficient to indicate to the trial court a desire to invoke the right to self-representation.

We see no error in the pre-trial arraignment.

The appellant was unequivocally convicted of Count 1, charging possession of cocaine with intent to distribute. Count 2 charged the simple possession of cocaine. Count 3 charged the possession of drug paraphernalia. The docket entries record: "Court finds defendant guilty to count #1 distribution cocaine; counts #2 and #3 as lesser included." The

appellant contends that the verdict actually rendered from the bench directly rendered a verdict only with respect to Count 1 and that the docket should be amended to show that there were no verdicts with respect to those other two counts.

In rendering his verdict, Judge Wilson summed up the evidence against the appellant. As a matter of logic and inference, he found the appellant guilty across the board.

> At that time, I do agree with the State that we do see the defendant pulling something from down around his foot area and perhaps not on the video clip where the State stopped it, but further on in the clip, you can see it's clearly a cellophane baggie with some chunks or something, uh, in the lower portion of it. Not enough, certainly, to identify that that is the cocaine that we see in State's exhibit that was of course tested and admitted here into evidence.
>
> But the testimony is sufficient, the identification at that point by Mr. Miller of Mr. Walker as the one who sourced the cocaine that he then trans—or bought for $200 is amply corroborated by the circumstances, illicitness of Mr. Walker, that the Court does believe beyond a reasonable doubt that on May 10th Mr. Walker did in fact distribute crack cocaine or cocaine, . . . to the informant, Kirk Miller, in Hagerstown, Washington County, Maryland. I do find him guilty beyond a reasonable doubt.

(Emphasis supplied.)

We agree with the State that the court found all of the facts necessary to support verdicts of guilty on all counts. We agree with the appellant, however, that formal verdicts as to the lesser counts were inadvertently omitted. This is purely a technicality, but on the rendering of verdicts, technicality prevails. The words spoken from the bench trump the docket entries.

With respect to Count 2, however, charging simple possession, no harm was done. Simple possession is a lesser-included offense of possession with intent to distribute. The guilty verdict as to Count 1 necessarily implied guilt as to Count 2. Anderson v. State, 385

Md. 123, 132, 867 A.2d 1040 (2005); State v. Prue, 414 Md. 531, 535, 996 A.2d 367 (2010). Williams v. State, 200 Md.App. 73, 87, 24 A.3d 210 (2011).

Count 3, on the other hand, is not a lesser-included offense. It required its own formal verdict. For what it is worth (there was no sentence on Count 3), we hereby vacate the conviction on that count.

JUDGMENT AFFIRMED ON COUNT 1 AND COUNT 2; JUDGMENT REVERSED ON COUNT 3; COSTS TO BE PAID BY APPELLANT.