Circuit Court for Anne Arundel County
Case No. C-02-CR-17-002560

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 856

September Term, 2018

CARLINTON JOHN

v.

STATE OF MARYLAND

Graeff,
Berger,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: January 10, 2020

On June 27, 2018, Carlinton John, appellant, was convicted by a jury in the Circuit Court for Anne Arundel County of second degree rape and second degree assault. The court sentenced him on the rape conviction to 20 years, all but 13 years suspended, with five years of supervised probation and a requirement that he register for life on the sex offender registry.[1]

On appeal, appellant raises a single question for this Court's review, which we have rephrased slightly, as follows:

> Did the circuit court err in failing to comply with the requirements of Md. Rule 4-215(e) after appellant requested a postponement to hire private counsel?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On August 12, 2017, E.S., appellant's cousin, flew with her infant son from their home in California to Maryland for a family wedding. E.S. stayed with appellant's sister, Marilyn, while she was in town. E.S. did not travel to the wedding with appellant, but she saw him at the ceremony and spoke with him briefly at the reception.

After the wedding, appellant drove with E.S. and others back to Marilyn's home. E.S. testified that, when they arrived at Marilyn's house, appellant repeatedly made sexual advances toward her, despite her requests for him to stop. Appellant then pushed her down a flight of stairs and engaged in non-consensual sexual intercourse with her. She eventually was able to get away from appellant, and she called the police.

[1] The court merged appellant's assault conviction into his rape conviction for sentencing purposes.

Appellant was arrested. He was charged with second degree rape, sexual offense in the second degree, attempted sexual offense in the second degree, assault in the second degree, and reckless endangerment.

Trial was scheduled for May 1, 2018. That day, appellant's counsel, an assistant public defender, requested a postponement, stating that appellant's family was in the process of retaining private counsel. The following colloquy occurred:

> [PUBLIC DEFENDER]: I am Mr. John's attorney. I have been in the case—I am not sure how long I have been in the case. I have met with Mr. John. We are here for trial today and I have met for the first time some of Mr. John's family members. And Mr. John's family members as well as Mr. John would like the case postponed because they are in the process of hiring private counsel.
>
> THE COURT: Okay. So they have not yet [hired] private counsel?
>
> [PUBLIC DEFENDER]: They have not yet hired private counsel.
>
> THE COURT: **Mr. John is there anything that you want to say about that?**
>
> [APPELLANT]: **No.**
>
> THE COURT: No? Okay. Who is the attorney that they are hiring? Do you know?
>
> [PUBLIC DEFENDER]: I believe it is [private counsel].
>
> THE COURT: Okay. He has not entered his appearance or notified the Court that he is going to be representing you. Do you understand that, sir?
>
> [APPELLANT]: Yes.
>
> The COURT: Okay. Is there anything further that you want to add, [counsel]?
>
> [PUBLIC DEFENDER]: No, just that I understand the State's position and I am not going to steal their thunder but I will tell you that if [appellant] has an attorney that he feels is more appropriate for the case or that he feels more

comfortable with, then I would argue that he should have the right to hire that attorney and obviously qualify for the services that the public defender, because he does not himself have means. And I think he is relying upon his family which seems to be a close knit group to gather funds. So I would ask you to take all of that into consideration.

THE COURT: All right. Do you mind -- I am just going to ask [appellant] a question or two.

[PUBLIC DEFENDER]: Sure. Please.

THE COURT: If you object to any of them, just let me know. I just -- have you met with [private counsel] yet?

[APPELLANT]: No.

THE COURT: Okay have you had any interaction with him?

[APPELLANT]: Not yet.

THE COURT: Do you know why your family hasn't hired private counsel at this point? Because the case has been pending for quite a while.

[APPELLANT]: No.

THE COURT: Okay. All right. [State?]

[STATE]: Your Honor, the State would be objecting to the request. Within days of Hicks we have flown two witnesses in from California to testify in the case and we are prepared to go forward at this point. [Defense counsel] is an excellent attorney and he has prepared and we have had numerous discussions about the case and I think he would be well represented by [Defense counsel].

THE COURT: Okay. Is -- and this is the first that you would be hearing of this today?

[STATE]: It is.

THE COURT: All right, [appellant], I am going to deny the postponement request. We have not heard anything from private counsel that he intends to enter his appearance. This is [the first] we are hearing of it today. The case has been pending – let's see how long –

> [STATE]: He was indicted on November 3.
>
> THE COURT: Yes. Well statement of charges was September 14. So that is a long time and the State is prepared. They have made special arrangements to fly witnesses in in the case. I recognize it is a serious case but I just don't have anything that would give me confidence that [private counsel] is going to enter his appearance in your case. Or that you have made adequate arrangements for him to represent you. So I am going to deny the postponement request[.]

(Emphasis added.)

Appellant's jury trial began the following day with appellant represented by the assigned public defender. At the conclusion of the evidence, the court granted appellant's motion for judgment of acquittal on the charges of reckless endangerment, second degree sexual offense, and attempted second degree sexual offense. The jury then convicted appellant of second degree rape and second degree assault.

This appeal followed.

DISCUSSION

I.

Md. Rule 4-215(e)

Appellant contends that his convictions must be reversed because the circuit court failed to comply with the requirements of Md. Rule 4-215(e). Specifically, he asserts that, after his attorney stated that appellant and his family "would like the case postponed because they are in the process of hiring private counsel[,]" the court failed to provide "a forum to explain why he wanted to discharge his current attorney." Appellant argues that "the court never asked [him] why he was requesting to discharge defense counsel, and it made no finding as to whether [he] had a meritorious reason for discharging counsel."

The State contends that the circuit court "properly complied with Md. Rule 4-215." It notes that the court gave appellant the opportunity to "weigh-in on" the reason for the request, but appellant "indicated that he did not want to saying anything about it." The State asserts:

> The rule should not require the trial court to ignore the defendant's clearly-expressed desire not to say "anything" further about the request, or require the trial court to keep pressing the defendant until he or she gives a longer response.
>
> Indeed, requiring a trial court to browbeat a defendant who does not "want" to say "anything" more, until that defendant says something more detailed, risks inadvertently divulging trial strategy or matters covered by attorney-client privilege.

"The right to counsel is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights." *Jones v. State*, 175 Md. App. 58, 74 (2007), *aff'd*, 403 Md. 267 (2008). Md. Rule 4-215(e) was adopted to protect this right, and it "provides an orderly procedure to insure that each criminal defendant appearing before the court be represented by counsel, or, if he is not, that he be advised of his Sixth Amendment constitutional right to the assistance of counsel, as well as his correlative constitutional right to self-representation." *Broadwater v. State*, 401 Md. 175, 180–81 (2007) (quoting *Wright v. State*, 48 Md. App. 185, 191 (1981)).

Rule 4-215(e) provides as follows:

> (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.

(Emphasis added.)

Rule 4-215(e) demands "[s]trict compliance." *Holt v. State*, 236 Md. App. 604, 616 (2018) (quoting *Pinkney v. State*, 427 Md. 77, 87–88 (2012)). *See also State v. Graves*, 447 Md. 230, 241 (2016) (quoting *Pinkney*, 427 Md. at 87) ("In light of the fundamental rights implicated, Md. Rule 4-215(e) provides a 'precise rubric[]' with which we demand 'strict compliance.'"). A trial court's departure from the provisions of the rule generally constitutes reversible error. *State v. Hardy*, 415 Md. 612, 621 (2010) (quoting *Williams v. State*, 321 Md. 266, 272 (1990)). *But see Muhammad v. State*, 177 Md. App. 188, 255–57 (2007) (any error in failing to comply with Rule 4-215(a)(1) was harmless error), *cert. denied*, 403 Md. 614 (2008).

The Court of Appeals has explained that there are four steps implicated by the Rule that must be addressed before the trial court may grant or deny a request for a postponement to obtain new counsel. *Graves*, 447 Md. at 245. Those steps are: "(1) there must be a request to discharge counsel; (2) the court must 'permit the defendant to explain the reasons for the request'; (3) the court must consider those reasons; and (4) the court must determine whether the reasons given are meritorious." *Id.*

Thus, the first step in our analysis is determining whether Rule 4-215(e) was implicated, i.e., whether there was a request to discharge counsel. The Rule does not define what constitutes a request to discharge counsel, but the Court of Appeals has stated that a

request is "any statement from which a court could conclude reasonably that the [accused] may be inclined to discharge counsel." *Gambrill v. State*, 437 Md. 292, 302 (2014) (quoting *Williams v. State*, 435 Md. 474, 486–87 (2013)). The request "need not be explicit, nor must a defendant state his position or express his desire to discharge his attorney in a specified manner to trigger the rigors of the Rule." *Id*. (cleaned up).

In *Gambrill*, 437 Md. at 295–96, the defendant's attorney advised the trial court that he was requesting a postponement because the defendant was seeking to hire private counsel. The Court of Appeals held that the request, "perhaps ambiguous, was a statement from which the trial judge could have reasonably concluded that Gambrill wanted to discharge his public defender, triggering the inquiry and determination by the court under Rule 4-215(e)." *Id*. at 306–07. The Court stated: "To hold otherwise would be to thwart the very purpose of Rule 4-215(e), which is to give practical effect to Gambrill's constitutional options." *Id*. The Court concluded that, when "an ambiguous statement by a defendant or his or her counsel is made under Rule 4-215(e), the fulcrum tips to the side of requiring a colloquy with the defendant." *Id*. at 306–07. *Accord Graves*, 447 Md. at 243 (Rule 4-215(e) was triggered when the public defender informed the court that the defendant told him that he would prefer to have private counsel represent him rather than the public defender); *State v. Taylor*, 431 Md. 615, 637 (2013) (Defendant's "request to replace his current defense counsel with [private counsel] was arguably an implicit request to discharge his present counsel."); *State v. Davis*, 415 Md. 22, 31 (2010) (Defense counsel's statement to the trial court that the defendant wanted a jury trial and new counsel served as an adequate request to discharge counsel pursuant to Rule 4-215(e).).

Here, defense counsel's request for a postponement because appellant and his family wanted to hire private counsel similarly implicated the requirements of Rule 4-215(e). Thus, we turn to the second step, with which appellant contends the court failed to comply.

As indicated, once the Rule has been triggered, the court must "permit the defendant to explain the reasons for the request." Md. Rule 4-215(e). "[T]he trial judge's duty is to provide the defendant with a forum in which to explain the reasons for his or her request." *Taylor*, 431 Md. at 631. "Inquiry into the reasons for the request to discharge counsel is vitally important because the reasons given dictate how the court proceeds under the rule[.]" *Graves*, 447 Md. at 242. If the reasons for the request to discharge counsel are meritorious, the court must permit the discharge and order a continuance, if necessary. *Taylor*, 431 Md. at 631; *Pinkney*, 427 Md. at 94. If the reasons are not meritorious, the court may deny the request, and if the defendant elects to keep the attorney he or she has, continue with trial. *Graves*, 447 Md. at 243.[2]

[2] In *State v. Taylor*, 431 Md. 615, 631 (2013), the Court of Appeals stated that the court must first inform the defendant that "the trial will proceed as scheduled with the defendant unrepresented by counsel." The Rule, however, states that the court may not permit the discharge of counsel without giving that information. Here, appellant never indicated an intent to proceed without his assigned counsel if the postponement was not granted, and appellant proceeded to trial with counsel. Thus, no such advise was needed here. *See Garner v. State*, 183 Md. App. 122, 130 (2008) (Certain provisions of Rule 4-215 are triggered only if court permits defendant to discharge counsel.), *aff'd*, 414 Md. 372 (2010). *Accord Pinkney v. State*, 427 Md. 77, 98 (2012) (Court not required to advise defendant about option to proceed *pro se* where court denies request to discharge counsel as unmeritorious and defendant does not indicate desire to invoke right to self-representation.). Indeed, appellant does not contend that there was error in this regard.

In *Taylor*, 431 Md. at 624, the assigned public defender explained that Taylor was seeking a continuance because he wanted to replace him with private counsel, who previously had represented Taylor favorably. The public defender added that Taylor could "correct whatever things are not correct" in his explanation. *Id*. The court denied the postponement. Before another judge the following day, the public defender explained why Taylor wished to replace him with private counsel and then asked Taylor if the reasons he was giving were correct or whether he was "missing anything." *Id*. at 625. Taylor replied: "Um—that pretty much sums it up." *Id*. The Court held that, under these circumstances, the circuit court had complied with the rule "by providing Taylor a forum in which to provide an explanation[.]" *Id*. at 640.

Here, we are persuaded that, as in *Taylor*, the circuit court complied with Rule 4-215(e) because, when it asked if there was "anything that [appellant] want[ed] to say about that," it invited appellant to weigh-in on the reason for discharging his assigned public defender in favor of private counsel. Appellant was asked an open-ended question by the court, which provided him a forum to personally explain his reasoning. He declined to do so.

The "onus" on the court is only to provide a forum for the defendant to explain the reasoning for his request. The court is not required to use any magic words or coerce a reason out of a defendant where the defendant is given the opportunity to explain his

reasoning but declines to do so. *See Hawkins v. State*, 130 Md. App. 679, 686 (2000) ("judge need not engage in full-scale inquiry pursuant to Rule 4-215)."[3]

Once the court gave appellant the opportunity to explain why he wanted private counsel instead of his assigned attorney, the judge's duty was "to listen, recognize that he or she must exercise discretion in determining whether the defendant's explained reasons are meritorious, and make a rational decision." *Taylor*, 431 Md. at 642. The court complied with that duty. The record reflects, as it did in *Taylor*, that the court considered appellant's request to substitute his defense counsel but did not find it meritorious. *Id.* at 643. There was no violation of Md. Rule 4-215(e) in this case.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[3] *State v. Graves*, 447 Md. 230 (2016), upon which appellant relies, is distinguishable. In that case, the central issue was whether it was sufficient for the defendant's attorney to provide the reasons for discharging counsel. *Id.* at 235. The Court of Appeals held that the circuit court was "not permitted to rely on defense counsel's explanation of the request to discharge counsel[,]" and instead, the *defendant* must explain the reasons for the request. *Id.* at 247. The court in *Graves* only asked the defendant directed questions regarding receipt of the charging paperwork, the nature of the charges and associated penalties, and whether he had hired private counsel. *Id.* at 236–38. Although that inquiry was insufficient to comply with Rule 4-215(e), *id.*, the court here asked appellant an open-ended question and gave him a forum to explain why he wanted to discharge his appointed counsel and retain private counsel.