

Circuit Court for Montgomery County
Case No.: 133818C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1167

September Term, 2019

YASMIN HENRIQUEZ-LOPEZ

v.

STATE OF MARYLAND

Berger,
Leahy,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 30, 2020

*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.

A jury in the Circuit Court for Montgomery County convicted Yasmin Henriquez-Lopez, appellant, of sexual abuse of a minor and second-degree child abuse. The State concedes error in the circuit court's failure to conduct the proper inquiry required by Maryland Rule 4-215(e) following appellant's request to discharge counsel. For the reasons set forth below, we reverse appellant's convictions and remand for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

Because this case turns solely on the resolution of a procedural issue, a detailed recitation of the facts adduced at trial is unnecessary for purposes of our review. We note that on May 17, 2018, a grand jury in the circuit court indicted and charged appellant with multiple charges of physical and sexual abuse of her daughter, E., for acts alleged to have occurred between November 1, 2010 and March 22, 2018.

On May 24, 2019, appellant, represented by court-appointed counsel, appeared for a pre-trial motions hearing. At the beginning of the hearing, defense counsel advised the court that appellant was seeking a postponement to retain private counsel:

[DEFENSE COUNSEL]: Thank you, Your Honor. I have a preliminary issue that I would like to raise after speaking with [appellant] this morning. She and I have been working diligently over the past couple of weeks, and she is concerned with her trial going forward on Tuesday. She and her family have been meeting and consulting with each other, and would like to consult with a private attorney this afternoon, in an effort to obtain a private attorney to represent her.

She obviously is not sure whether that private attorney would be ready for a trial on Tuesday. I've told her I doubt that there would be someone who would be ready for a trial on Tuesday. But she doesn't have that information for the Court right now,

as her sister is preparing to go and meet with one or more attorneys this afternoon.

She would be asking the Court to consider continuing the case so that she can have the attorney of her choice representing her at the trial, where there is a significant risk of her going to jail for a significant amount of time if she were to lose this trial. So that's what she would be requesting at this time.

The State opposed appellant's request for a continuance, arguing that the case had been pending for a full year and that "[appellant] is more than competently represented by [defense counsel]." The State also expressed its concern that "this is potentially not even a genuine request on her behalf."

Defense counsel responded to the State's comments and further explained to the court appellant's position:

I understand the State's concern about this not being genuine. I can, however, tell you that literally [appellant] and I have been spending significant amounts of time in reviewing everything, and I think that is what has caused her and her family to reach out and try to find a private attorney to represent her. I don't think there's any gamesmanship going on. I think that this is based on where she finds herself at this point, and the fact that she would like someone else to be representing her.

Again, she's facing over 100 years, so there's a lot at risk that she is facing.

I would ask Your Honor to at least continue this morning's conclusion of this hearing, if you're not willing to continue the complete trial, so that if she is able to get an attorney to be willing to represent her on Tuesday, again, I've told her I – sorry. I've told her I'm not sure that that would happen, but if she were able to do that, at least that attorney would be able to handle everything that is remaining for [appellant], which is what she is hoping for.

The court denied the request for a continuance without inquiring as to appellant's reasons for seeking to discharge her counsel or addressing appellant directly:

All right. This case has been pending for, as the State mentioned, for over a year, and I know that part of the delay was there were a number of factors that contributed to the delay in us finally having the trial date established for next Tuesday, which has been cleared on everyone's calendar. And we've had that date locked in at this point for a while. Without going back and looking specifically at how long, it has been for some period of time everyone's been aware of this Tuesday trial date.

* * *

I will note that in my view that [appellant] is very competently represented by [defense counsel], who has been involved in the case for some time, who is very familiar with the case. And I'm going to deny the request for a continuance as to both continuing today's proceeding, and continuing the hearing or the trial on Tuesday.

[DEFENSE COUNSEL]: Just so [appellant] is clear, that doesn't mean if she found an attorney who is willing to come in on Tuesday and enter their line, they would still be able to do that and represent her. You're just not continuing anything.

THE COURT: Correct. Correct.

Trial proceeded, as scheduled, on May 28, 2019. Prior to the start of trial and jury selection, defense counsel renewed appellant's prior request for a continuance:

[DEFENSE COUNSEL]: [Appellant] would renew her motion to continue. I know that we had an argument about this on Friday. She actually met with an attorney over the weekend, and the attorney had advised her that that attorney would not be ready for trial today, but that if the case were continued 45 days that the attorney would be able to enter a line, and to represent her. She would like to have an attorney of her choosing, and we would ask Your Honor to consider continuing the case 45 days so that she can have that attorney represent her.

THE COURT: All right. And I'll deny that motion.

Trial proceeded as scheduled on May 28, 2019 with court-appointed counsel representing appellant. The jury found appellant not guilty of second-degree sexual offense and conspiracy to commit a second-degree sexual offense, and convicted her of sexual abuse of a minor and second-degree child abuse. The court sentenced appellant to twenty-five years of imprisonment for sexual abuse of a minor, with all but fifteen years suspended, and a concurrent sentence of fifteen years for second-degree child abuse, to be followed by five years of supervised probation.

DISCUSSION

Appellant argues that the circuit court violated Maryland Rule 4-215(e) by failing to inquire as to the reasons for her request for a postponement to obtain substitute counsel and by failing to make a finding as to whether her reasons were meritorious. The State agrees with appellant and concedes reversible error.

Rule 4-215(e) governs and protects a defendant's constitutional right to counsel guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *State v. Graves*, 447 Md. 230, 241 (2016). "The purpose of Rule 4-215 is to "protect that most important fundamental right to the effective assistance of counsel, which is basic to our adversary system of criminal justice." *Williams v. State*, 435 Md. 474, 485 (2013) (quoting *Parren v. State*, 309 Md. 260, 281 (1987)).

Rule 4-215(e) provides:

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....

Md. Rule 4-215(e) (emphasis added).

The provisions of Rule 4-215(e) are mandatory and require strict compliance; a court’s failure to adhere to the rule constitutes reversible error. *Hardy v. State*, 415 Md. 612, 621 (2010) (“The provisions of the rule are mandatory’ and a trial court’s departure from them constitutes reversible error.”) (quoting *Williams v. State*, 321 Md. 266, 272 (1990)); *see also Graves*, 447 Md. at 241 (“In light of the fundamental rights implicated, Md. Rule 4-215(e) provides a ‘precise rubric[]’with which we demand ‘strict compliance.’”) (quoting *Pinkney v. State*, 427 Md. 77, 87-88 (2012) (“a trial court’s departure from the requirements of Rule 4-215 constitutes reversible error”)); *State v. Davis*, 415 Md. 22, 35 (2010) (“[a]ny court that fails to follow-up with the defendant following a possible, albeit unclear, Rule 4-215(e) request risks appellate reversal of its judgment”). We review a circuit court’s compliance with Rule 4-215(e) under a *de novo* standard. *Graves*, 447 Md. at 240.

“Rule 4-215(e) is invoked by ‘[a]ny statement that would reasonably apprise a court of defendant’s wish to discharge counsel ... regardless of whether it came from the

defendant or from defense counsel.” *Holt v. State*, 236 Md. App. 604, 616 (2018) (quoting *Davis*, 415 Md. at 32)); *see also State v. Weddington*, 457 Md. 589, 601 (2018) (noting that the Court of Appeals “has espoused a broad interpretation of what constitutes a request to discharge counsel”). A request to discharge counsel need not be “a talismanic phrase or artfully worded to qualify as a request to discharge, so long as a court could reasonably conclude that [he] sought to discharge his counsel.” *State v. Campbell*, 385 Md. 616, 632 (2005).

The Court of Appeals has recognized that a request made by counsel on behalf of the defendant is sufficient to trigger inquiry under Rule 4-215(e). In *Gambrill v. State*, 437 Md. 292, 304-05 (2014), defense counsel stated to the court on the day of trial, “Your Honor, on behalf of Mr. Gambrill, I’d request a postponement. He indicates he would like to hire private counsel in this matter.” *Id.* The Court noted that although Gambrill’s request was coupled with a request for a postponement, and not entirely clear, it “did not relieve the judge of his obligation to comply with Rule 4-215(e)[.]”. *Id.* at 305. But rather, “the ambiguity mandated judicial inquiry followed by a determination.” *Id.* *See also Graves*, 447 Md. at 244 (holding that defense counsel’s statement that “[Mr. Graves] has informed me that he would prefer to have John Robinson represent him in this matter as opposed to myself” invoked further inquiry under Rule 4-215(e)).

In the present case, the statements of appellant’s counsel were nearly identical to those of defense counsel in *Gambrill*. Appellant’s counsel’s representation to the court that her client “would like to consult with a private attorney this afternoon, in an effort to obtain a private attorney to represent her,” and that “[s]he would be asking the Court to

consider continuing the case so that she can have the attorney of her choice representing her at trial” were statements from which a court could reasonably conclude that she was interested in discharging counsel. Even if appellant’s counsel’s statements could be regarded as ambiguous because they included a request for a continuance, the trial court was obligated to resolve that ambiguity in favor of appellant and consider the request as one to discharge counsel. *See Gambrill*, 437 Md. at 306 (“[w]hen 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”).

Similarly, on the day of trial, appellant’s request to “renew her motion to continue” so that she could “have an attorney of her choosing” represent her at trial was sufficient to trigger the requirements of Rule 4-215(e). The trial court was required, pursuant to Rule 4-215(e), to inquire further as to appellant’s reasons for seeking to discharge counsel and determine whether they were meritorious. The trial court’s failure to address appellant directly and conduct any such inquiry at the pre-trial hearing, and again at trial, as provided in Rule 4-215(e), requires reversal. *See Weddington*, 457 Md. at 600-01 (“A trial court’s failure to comply with the requirements of Rule 4-215 constitutes reversible error.”).

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
REVERSED. CASE REMANDED FOR
FURTHER PROCEEDINGS NOT
INCONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY MONTGOMERY
COUNTY.**