Circuit Court for Montgomery County
Case No. 118331C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1316

September Term, 2020

CLAUDE A. KING

v.

STATE OF MARYLAND

Arthur,
Leahy,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 7, 2022

Appellant Claude A. King was convicted by a jury in the Circuit Court for Montgomery County on three counts: kidnapping, first-degree rape, and first-degree sexual offense. The court sentenced Mr. King to life imprisonment for first-degree sexual offense, a consecutive term of 90 years of imprisonment for first-degree rape, and a consecutive term of 15 years of imprisonment for kidnapping.

On December 29, 2020, Mr. King was granted the right to file a belated appeal. Although he presents four questions on appeal,[1] the first, asking whether the trial judge violated Maryland Rule 4-215, is dispositive. Because we are compelled to hold that the circuit court failed to comply with Maryland Rule 4-215(a)(1)-(4), we must reverse Mr. King's convictions and remand for a new trial. In light of this disposition, we need not address the remaining issues that Mr. King has raised.

[1] Mr. King states the questions presented as follows:

"1. Did the trial judge violate Maryland Rule 4-215?

2. Did the tr[ia]l judge err by precluding defense counsel from cross-examining the complaining witness on an issue relating to her credibility?

3. Did the trial judge plainly err by allowing the prosecutor to make impermissible 'golden rule' arguments in closing?

4. Did the trial judge plainly err by failing to instruct on the lesser-included offenses of second-degree rape and second-degree sexual offense and giving confusing instructions on the greater offense?"

BACKGROUND

In the early morning of December 20, 2003, M.H.[2] was at her apartment in Silver Spring playing cards with a friend, Timothy Cautino. M.H. testified that, around 1:30 a.m., she and Mr. Cautino left her apartment to look for cigarettes. M.H. and Mr. Cautino briefly separated while M.H. checked her mail. M.H. found Mr. Cautino speaking to an unidentified man and getting a light for a cigarette. Seeing that the man had a lighter, M.H. asked him if he had any cigarettes that he could give her. The man said that he had some spare cigarettes in his car and told M.H. to follow him.

The man led M.H. past a gate outside of the apartment complex and when they reached the car, he told her that she was going to go with him and warned her not to scream. The man struck M.H. in the face, fracturing her jaw, and forced her into the trunk of his car.

After driving for an indeterminate amount of time, the man stopped the car and ordered M.H. to follow him into the woods. In the woods, the man directed M.H. to take her clothes off and then placed his tongue on her vagina and penetrated her vagina with his penis, as M.H. pleaded with him to stop. Afterward, the man got in his car and drove away.

After the man drove off, M.H. made her way to a road and flagged down the driver of a van, which took her back to her apartment complex. M.H. then met with three security guards in the lobby. She told them that she had been raped, and they called the police.

[2] To protect the victim's identity, we refer to her by her initials only throughout this opinion.

Police officers and an ambulance came, and M.H. was taken to Shady Grove Adventist Hospital.

At the hospital, a physician assistant interviewed and treated M.H. in the emergency room. Among other things, the physician assistant observed swelling to the left side of M.H.'s face and restricted movement of her jaw resulting from the trauma. M.H. then underwent a sexual assault forensic examination, which yielded DNA evidence. Samples from this exam were taken to the evidence room of the Major Crimes Division of the Montgomery County Police Department.

In April 2008, approximately four-and-a-half years after the attack on M.H., a buccal swab (i.e., a sample taken from inside one's cheek) was collected from Mr. King. A biologist compared the DNA profile from Mr. King's cheek with the "foreign make DNA profile that was collected" from M.H. She concluded that Mr. King "could not be excluded as the source of the foreign DNA on . . . the vaginal/cervical sample." At trial, the biologist testified that the "approximate frequency of that foreign DNA profile" within different populations was "one in greater than the world population for all of the groups, but the most conservative one was that frequency was determined to be approximately one in 5.7 sextillion."[3] She opined that this was a "very rare DNA profile" and, with the exception of an identical twin, she "wouldn't expect anyone else to have it."

[3] The biologist explained that 5.7 sextillion is a "five with a seven after it, followed by 20 zeroes."

On May 13, 2011, a grand jury sitting in Montgomery County returned an indictment against Mr. King for the following counts: (1) kidnapping in violation of Maryland Code (2002), Criminal Law Article ("CR"), § 3-502; (2) rape in the first degree in violation of CR § 3-303; and (3) sexual offense in the first degree in violation of the former CR § 3-305.[4] After a three-day jury trial, beginning on January 24, 2012, a jury found Mr. King guilty of all three charges.

On April 4, 2012, the court sentenced Mr. King to life imprisonment for the first-degree sexual offense conviction. For the rape in the first-degree conviction, the court sentenced Mr. King to a term of 90 years, to be served consecutively to his life sentence. Finally, the court sentenced Mr. King to 15 years for kidnapping, consecutive to both sentences.

Mr. King was granted the right to file a belated appeal on December 29, 2020.[5] This appeal followed.

[4] Sexual offense in the first degree was repealed by the General Assembly in 2017, and the offense was combined with first-degree rape, after Mr. King's trial and convictions. 2017 Md. Laws ch. 161 (S.B. 944).

[5] While Mr. King's trial counsel originally filed a notice of appeal, he failed to file a brief and did not contact the Appellate Division of the Office of the Public Defender after it became apparent that neither he nor Mr. King could afford the cost of the trial transcripts. Accordingly, this Court dismissed Mr. King's initial appeal. Because Mr. King was denied his right of appeal, through no fault of his own, he was granted the right to a belated appeal. *See Garrison v. State*, 350 Md. 128, 139 (1998) ("Typically, courts permit belated appeals when a timely direct appeal was attempted, but thwarted by the action of State officials, or when a defendant, through no fault of his own, is denied an appeal." (cleaned up)).

DISCUSSION

I.

Dismissal of Counsel

A. Background

Mr. King was originally represented by an attorney from the Montgomery County Office of the Public Defender. On August 9, 2011, Mr. King sent a letter to the Office of the Public Defender. In the letter, Mr. King averred that the public defender assigned to him was "only able to answer 8 of the 22 questions" that he had prepared to ask. Mr. King had to "research[] and locate[] information pertaining to my case which [the public defender] said was not true." He asserted that his counsel "refused" to keep him "informed of the progress in the case" and that he "had to remind [his counsel] that there was a plea agreement offered." Mr. King summarized that his counsel had "been an ineffective counsel and d[id] not have any interest in properly representing [him]" and requested a new public defender be assigned to his case. The circuit court treated the letter as a motion to discharge his assigned public defender and held an emergency hearing on that motion on August 18, 2011.

At the hearing, Mr. King explained why he was dissatisfied with his counsel. Among other things, Mr. King asserted that his counsel had not answered all of his questions and that he was not adequately communicating to Mr. King all of the developments in his case. Mr. King also felt that "[my counsel] has already judged me . . . because of my past."

The court then offered both the assistant public defender and the assistant state's attorney the opportunity to address the court. Both declined. After asking a few questions concerning the status of discovery, the court ruled on Mr. King's motion to discharge his counsel. The court found that Mr. King had "understandable and normal" anxiety but lacked meritorious reasons for discharging his counsel. The following exchange ensued:

> THE COURT: Now, that said, **even though I've found no meritorious reasons for Mr. King's request, you can discharge him but I must tell you first that the trial will proceed as scheduled with you unrepresente**d if you discharge [your counsel]. . . .
>
> I leave that decision to you but as of today, I find no meritorious reason. And if you want time to think about what we do next, that's fine, you don't have to make a decision on the spot. If you want to sleep on it, if you want to discuss it with [your counsel] or others, you're certainly welcome to do that **but my ruling is if you fire him, we're going to trial and you'll be representing yourself.** Thank you.
>
> * * *
>
> [KING'S COUNSEL]: [M]y last conversation with Mr. King was that he has, in effect, you know, fired me. He doesn't want me to work on his case anymore.
>
> * * *
>
> THE COURT: [Let me] address Mr. King, do you want [your counsel] to represent you at trial?
>
> MR. KING: Your Honor, I think I'm going to have to take your advice and think about it. Because I am not having went to school to, you know, actually

stand up in front of Your Honor and defend myself in this matter.

THE COURT: Sure, that's your call. I mean --

MR. KING: Okay.

THE COURT: -- it's your, absolutely your decision. Procedurally though, I don't want to leave this in a lack of clarity. If you have told [your counsel] you're off the case, then ethically he can't work on it.

MR. KING: Okay.

THE COURT: I think if you tell him something like, you're not fired, he'll be happy to work on it. But he needs your direction and every day is important and every day he's not available to work on it is a day that we all never get back. So you can take whatever time you need but I think as of now, ethically, unless you tell him I want you working on the case then ethically he can't. You could always fire him later. But that's up to you. I'm not telling you what to do, sir, it's your constitutional right, not mine.

MR. KING: Yes, sir. Thank you.

[STATE'S ATTORNEY]: So I guess for the record the State, if I have any further materials that need to be given or notices, I will have the defendant served in the jail –

THE COURT: Is that –

[STATE'S ATTORNEY]: -- and I will not –

THE COURT: -- correct –

[STATE'S ATTORNEY]: -- go through –

THE COURT: -- Mr. King?

[STATE'S ATTORNEY]: -- [Mr. King's counsel]?

THE COURT: **All right. [Your counsel] is discharged, but not for meritorious reasons. The State will kindly serve all things directly on Mr. King, who is proceeding to trial in this case pro se**.

(Emphasis added).

Mr. King's next appearance in the circuit court was on September 16, 2011, one month after his counsel was discharged. In the intervening period, Mr. King retained new counsel, who represented him at this hearing. Mr. King's new counsel asked the court for a postponement so that he would have additional time to prepare for trial. Upon questioning from the court, Mr. King stated that he had had an opportunity to discuss the case with his new counsel and that he was "very" satisfied with the representation he was receiving. The court then "reluctantly" granted the postponement because, given the seriousness of the charges, it wanted Mr. King to be "allow[ed] . . . to prepare an adequate defense in the case." The trial was then postponed until January 24, 2012.

B. Parties' Contentions

Mr. King argues that the court failed to comply with the requirements of Maryland Rule 4-215(a) when it allowed him to discharge his counsel without ensuring that "he had received a copy of the charging document"; was advised "of the right to counsel and the importance of the assistance of counsel"; advised "of the nature of the charges and the allowable penalties"; and that the court conducted a waiver hearing. Quoting *State v.*

Camper, 415 Md. 44, 55 (2010), Mr. King contends that Rule 4-215 is a "'precise rubric' that requires strict compliance," and "anything less constitutes reversible error."

The State contends that the circuit court did not violate Rule 4-215. It argues that the court did not need to follow Rule 4-215's provisions "because [Mr.] King never indicated a desire to waive his right to counsel." In the State's view, despite the circuit court's statement that defense counsel was "discharged," Mr. King had not yet waived his right to counsel because the court indicated that Mr. King "could revisit the issue," and Mr. "King himself made no decision about whether he would represent himself, re-engage his defense counsel, or hire new counsel." The State acknowledges that if Mr. King had appeared at a subsequent hearing and the court had not complied with Rule 4-215(a) at that time, then "a violation would have occurred." But because Mr. King obtained new defense counsel before the next hearing and "never indicated a desire to waive counsel," the State argues that there was no violation.

Alternatively, the State asserts that Rule 4-215 violations only merit reversal of a conviction when they "affect a defendant's fundamental right to counsel." According to the State, "[t]here are generally two scenarios in which a Rule 4-215 violation occurs." First, a "defendant has discharged counsel (but not in conformance with Md. Rule 4-215) and proceeds to trial pro se (1) unwillingly or (2) willingly but without being fully informed of the consequences of the decision." The State asserts that the "second happens when a court declines to permit a defendant to discharge counsel (even though the defendant has meritorious reasons) and the defendant proceeds to trial with that attorney, despite having

perhaps had valid reasons for wanting to discharge them." According to the State, these scenarios are not present, and Mr. King's "right to defend oneself and [] right to have the assistance of counsel" were "never in danger during his trial." Relying on *Womack v. State*, 244 Md. App. 443, 470-71 (2020), the State asserts that "[s]ubsequent events can, and should, be considered by the court." The State concludes: "To find a violation of the right to counsel when a defendant proceeded to trial with the counsel of his choosing would be illogical."

In reply, Mr. King argues that Rule 4-215 "does not just apply when a person indicates a desire to represent themselves; it applies whenever a person '<u>requests permission to discharge an attorney whose appearance has been entered</u>.'" (Quoting Md. Rule 4-215(e)) (emphasis supplied by Mr. King). According to Mr. King:

> It does not matter whether a person ultimately wishes to represent themselves or whether they would rather be represented by counsel of their choice; what matters is that they are transitioning from being a represented person to an unrepresented person, and therefore they are waiving their constitutional right to counsel.

Because "the court failed to comply with Rule 4-215(a)(1)-(4)," Mr. King could not make a "knowing and intelligent waiver of the right to counsel."

Mr. King also disputes the State's assertion that he was never deprived of his right to counsel, because "he was *pro se* for three weeks" after the hearing on August 11, 2011. He asserts that this three-week period was an "important stage of the case." During this period, the "State filed supplemental discovery," and Mr. King "requested additional discovery and filed an emergency motion to postpone, the trial date, which was denied."

Mr. King also avers that, during this period, he "could have negotiated with the State and decided to take a plea offer." Instead, he claims, he had to make "hurried decisions regarding which attorney to hire on a last-minute basis."

Even though Mr. King was represented at trial, Mr. King urges that "the focus of our inquiry is at the point when the waiver is accepted," and that subsequent events cannot cure an erroneous discharge unless the defendant has "a chance to reconsider the discharge of counsel after the full advice is given." (Quoting *Womack v. State*, 244 Md. App. 443, 470-71 (2020)). Finally, relying on *Brye v. State*, 410 Md. 623, 638-43 (2009), Mr. King contends that it is immaterial "what happened at the trial," and urges that "[t]here is no justification for this Court to depart from the well-established rule that 'failure to comply strictly with Rule 4-215 constitutes reversible error.'"

C. Analysis

A defendant's right to counsel in a criminal case "is guaranteed by the Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, and by Article 21 of the Maryland Declaration of Rights." *Brye v. State*, 410 Md. 623, 634 (2009). In addition, a defendant has the "corresponding right to proceed without the assistance of counsel." *Id.* To implement and protect these parallel rights, Maryland Rule 4-215 "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." *Knox v. State*, 404 Md. 76, 87 (2008) (quoting *Broadwater v. State*, 401 Md. 175, 180 (2007)).

Maryland Rule 4-215 states, in relevant part:

> (a) **First Appearance in Court Without Counsel.** — At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:
>
> (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.
>
> * * *
>
> **(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 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.

"The function of the Rule is to ensure that [the decision to waive counsel] is made with eyes open and that the defendant has undertaken waiver in a knowing and intelligent fashion." *Womack v. State*, 244 Md. App. 443, 451 (2020) (cleaned up) (quoting *Broadwater*, 401 Md. at 181). To that end, Rule 4-215(e) provides a "precise rubric" with

which reviewing courts "demand 'strict compliance.'" *Graves*, 447 Md. at 241 (quoting *Pinkney v. State*, 427 Md. 77, 87 (2012)). The Rule

> explicates the method by which the right to counsel may be waived by those defendants wishing to represent themselves, . . . and the necessary litany of advisements that must be given to all criminal defendants before any finding of express or implied waiver of the right to be represented by counsel may be valid.

Id. (quoting *Broadwater*, 401 Md. at 180). A "departure from [those] requirements . . . constitutes reversible error." *Pinkney*, 427 Md. at 88. We review a trial court's compliance with Maryland Rule 4-215(e) without deference to the court. *State v. Graves*, 447 Md. 230, 240 (2016).

In *Dykes v. State*, the Court of Appeals summarized the three steps that a court is required to follow when Rule 4-215(e) is triggered:

> ***(1) The defendant explains the reason(s) for discharging counsel[.]*** While the rule refers to an explanation by the defendant, the court may inquire of both the defendant and the current defense counsel as to their perceptions of the reasons and need for discharge of current defense counsel.
>
> ***(2) The court determines whether the reason(s) are meritorious[.]*** The rule does not define "meritorious." This Court has equated the term with "good cause." This determination—whether there is "good cause" for discharge of counsel—is an indispensable part of subsection (e) and controls what happens in the third step.
>
> ***(3) The court advises the defendant and takes other action[.]*** The court may then take certain actions, accompanied by appropriate advice to the defendant, depending on whether it found good cause for discharge of counsel—i.e., a meritorious reason.

444 Md. 642, 652 (2015) (cleaned up). If a court finds "no meritorious reason to discharge counsel," it must, among other things, "conduct further proceedings in accordance with subsection (a) of the rule— which governs a defendant's first appearance in court without

counsel—if there has not been prior compliance[.]" *Id.* at 653. When there is not a meritorious reason to discharge counsel, a defendant is not entitled to substitute counsel. *Id.* Rather, '"Rule 4-215(e) embodies the principle . . . that an *unmeritorious* discharge of counsel and request for new counsel, in an apparent effort to delay the trial, may constitute a waiver of the right to counsel' if done knowingly and voluntarily." *Id.* at 653-54 (emphasis in original) (quoting *Fowlkes v. State*, 311 Md. 586, 603 (1988)). The Rule "permits a trial court to treat such conduct as a waiver, provided that the court first informs 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' and that the court otherwise complies with the requirements of the Rule." *Fowlkes*, 311 Md. at 603 (quoting Rule 4-215(e)).

Returning to Mr. King, the circuit court did not comply with subsections (a)(1)-(4) of Rule 4-215. First, there is no indication that Mr. King received a copy of the charging document. Md. Rule 4-215(a)(1). "Subsection (a)(1), unlike the other provisions [of Rule 4–215], involves only the objectively measured question of whether 'the defendant received a copy of the charging document containing notice as to the right to counsel.'" *Muhammad v. State*, 177 Md. App. 188, 249-50 (2007), *cert. denied*, 403 Md. 614 (2008). The subsection does not require a judge to "make certain" of this fact. *Id.* at 250. The receipt of the document "speaks for itself and *ipso facto* satisfies the subsection." *Id.* Because of this difference, this Court has held that a violation under subsection (a)(1) may be harmless. *Id.* at 255. Mr. King certainly understood that his case was "serious when

you're talking about 25 to life or just life period," but we cannot discern from the record any indication that he received a copy of the charging document. In any event, we need not conduct a harmless error analysis of this error because violations of other provisions of Rule 4-215(a), noted below, are not "subject to a harmless error analysis." *Womack*, 244 Md. App. at 453.

Second, the court did not "[i]nform [Mr. King] of the right to counsel and the importance of assistance of counsel." Md. Rule 4-215(a)(2). This advisement needed to be "made by the judge personally to the defendant on the face of the record." *Broadwater v. State*, 171 Md. App. 297, 304 (2006), *aff'd*, 401 Md. 175 (2007). While the court noted that "there's no question that this is a very serious case," and told Mr. King "it's your constitutional right, not mine," the only constitutional right referenced is the "constitutional right to discharge [Mr. King's first counsel]." Even if this pronouncement informed Mr. King of his right to counsel, the court did not explain the importance of counsel. We have explained that a simple statement on the record that "a lawyer can be very helpful . . . in preparing information for the Court to consider" is "tantamount to advising that the assistance of counsel is important and, therefore, constitutes strict compliance with subsection (a)(2)." *Webb v. State*, 144 Md. App. 729, 746 (2002). Here, the court did warn Mr. King that "every day is important and every day [King's lawyer] is not available to work on [his case] is a day that we all never get back." However, we determine that this advisement did not explain how counsel could assist Mr. King in the presentation of his

case or protect his interests, and, therefore, did not inform Mr. King of the "importance of assistance of counsel." Md. Rule 4-215(a)(2).

Third, Mr. King was not advised of "the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any." Md. Rule 4-215(a)(3). Subsection (a)(3) "exists to ensure that a defendant is made aware of all pending charges and associated penalties," *Womack*, 244 Md. App. at 453 (quoting *Brye*, 410 Md. at 637), and a defendant "cannot effectively waive counsel without an 'apprehension . . . of the range of allowable penalties,'" *Knox*, 404 Md. at 91 (quoting *Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948)). "[W]hen a failure to comply with subsection (a)(3) of Rule 4-215 is found, reversible error is the result." *Byre*, 410 Md. at 641; *see also Knox*, 404 Md. at 87 (harmless error review is inapplicable for violations of Rule 4-215(a)(3)). Here, Mr. King was not advised of any of his charges. "Although Rule 4-215 'does not require a *verbatim* recitation' of the charges, the court must make sure that a defendant is made aware of all pending charges." *Womack*, 244 Md. App. at 459 (quoting *Peterson v. State*, 196 Md. App. 563, 578 (2010)). The court's summation that this was a "very serious case" was insufficient. Further, not only is there no recitation in the record of Mr. King's "allowable penalties," Mr. King appeared to be operating under the mistaken assumption that his penalties could involve "25 to life or just life period" when Mr. King was facing the possibility of receiving two life sentences plus a consecutive thirty years of incarceration. CR § 3-303(d)(1) (first-degree rape subject to imprisonment not exceeding life); CR § 3-502 (kidnapping subject to imprisonment not exceeding 30 years); 2017 Md.

Laws ch. 161 (S.B. 944) (maximum penalty for first-degree sexual offense was life). This violation alone requires that we reverse Mr. King's convictions.

Finally, the court failed to conduct a waiver inquiry pursuant to Rule 4-215(b). Md. Rule 4-215(a)(4). While the court informed Mr. King at the end of the hearing that he was proceeding pro se, the judge did not determine that Mr. King waived this right knowingly and voluntarily. Subsection (b) provides:

> If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof of the defendant's express waiver of counsel. After there has been an express waiver, no postponement of a scheduled trial or hearing date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.

Neither the court nor the State's Attorney conducted an inquiry into whether Mr. King wished to waive his right to counsel. Indeed, the court actually advised Mr. King that he did not "have to make a decision on the spot," and Mr. King stated he would take the court's "advice and think about it." Moments later, however, the court concluded that Mr. King was proceeding pro se without further examination on the record.

Generally, "[b]ecause the right to counsel is a 'basic, fundamental and substantive right,' the requirements of Maryland Rule 4-215 are 'mandatory and must be complied with, irrespective of the gravity of the crime charged, the type of plea entered, or the lack

of an affirmative showing of prejudice to the accused."' *Broadwater*, 401 Md. at 182 (quoting *Taylor v. State*, 20 Md. App. 404, 409, 411 (1974)); *see also Lopez v. State*, 420 Md. 18, 31 (2011) ("When applicable, [Rule 4-215's] provisions are mandatory, must be strictly complied with, and are not subject to a harmless error analysis."). The trial court discharged Mr. King's counsel without these advisements and directed that Mr. King would be proceeding pro se. As the "failure to comply strictly with Rule 4-215 constitutes reversible error," we have no choice but to reverse Mr. King's convictions. *Byre*, 410 Md. at 637.

In asserting that reversal is not warranted, the State raises two primary arguments. Neither is persuasive.

First, the State argues that, because Mr. King "never indicated a desire to waive his right to counsel," the court did not need to comply with Rule 4-215. However, even if Mr. King never affirmatively said that he wanted to discharge his counsel, he had written to the public defender's office explaining that he thought that his counsel was deficient. The circuit court, in turn, scheduled a hearing to address Mr. King's letter and announced that it interpreted the letter as a request to discharge counsel. As the court explained on multiple occasions, because Mr. King had told his counsel that he was "off the case," his counsel "ethically" could not "work on it." While the court advised Mr. King to "think about what we do next," the court concluded the hearing by stating that Mr. King's counsel "is discharged, but not for meritorious reasons." The court then directed the State to serve "all things directly on Mr. King, who is proceeding to trial in this case pro se." In determining

that Mr. King would be proceeding pro se, the court concluded that Mr. King had waived his right to counsel. Before Mr. King could proceed without counsel, however, "the rule requires the court to advise the defendant of the consequences of discharge," *Dykes*, 444 Md. at 654, so that Mr. King could waive this right in a "'knowing and intelligent' fashion," *Womack*, 244 Md. App. at 451. For a similar reason, the Rule is not only applicable when a person indicates a desire to represent themselves but when a person "requests permission to discharge an attorney whose appearance has been entered[.]" Md. Rule 4-215(e).

The Court of Appeals has explained that compliance with Rule 4-215(e) must be established before a valid waiver:

> Before a court may find that a defendant has waived the right to counsel, the court must be satisfied that the defendant is informed of the risks of self-representation, and of the punishments which may be imposed. The Rule "exists as a 'checklist' that a judge must complete before a defendant's waiver can be considered valid; as such, it mandates strict compliance.

Knox, 404 Md. at 87 (quoting *Johnson v. State*, 355 Md. 420, 426 (1999)). Without these required advisements, Mr. King did not proceed "with eyes open." *Broadwater*, 401 Md. at 181 (cleaned up); *see also Womack*, 244 Md. App. at 470 ("'The analytical focus of a Rule 4-215 argument is at the point in the proceeding when the waiver is accepted (and the relevant events leading up to that acceptance),' not what subsequently happens." (quoting *Brye*, 410 Md. at 643)). Because Mr. King never received the required advisements before discharging his counsel, the court failed to comply with Maryland Rule 4-215.

Second, the State asserts that Rule 4-215 violations only merit reversal of a conviction when they "affect a defendant's fundamental right to counsel." An inquiry into

whether an error "affects" a right is another way of reviewing whether an error is prejudicial to a defendant. However, a failure to strictly comply with the advisements of Maryland Rule 4-215 generally necessitates reversal regardless of whether the error was prejudicial to the defendant. *Broadwater*, 401 Md. at 182. In other words, harmless error is inapplicable. *State v. Camper*, 415 Md. 44, 57 (2010). In *Camper*, for example, even though a defendant was assumed to have actual knowledge of the maximum penalties he faced, the trial court's violation of Rule 4-215(a)(3) required reversal. *Id.* at 58-59.

In any event, here the trial court actually highlighted the prejudice that Mr. King could have experienced after removing his counsel. The court clarified that Mr. King's counsel "need[ed] [his] direction and every day is important and every day he's not available to work . . . is a day that we all never get back." Mr. King does offer some evidence that he was prejudiced because he was left without counsel for three weeks with his trial date looming. Even when Mr. King hired the attorney who ultimately represented him at trial, he had not been fully informed of his rights and was not positioned, as Maryland Rule 4-215 requires, to make intelligent decisions about his case.

The State's reliance on *Womack v. State* for the proposition that "[s]ubsequent events can, and should be considered by the court" is misplaced. In *Womack*, we construed "Rule 4-215 to permit a court to 'cure' an initial failure to comply with Rule 4-215 with subsequent advice to the defendant after the defendant has discharged counsel, but only if the court gives the defendant a chance to reconsider the discharge of counsel after the full advice is given." 244 Md. App. at 470-71. We agree with Mr. King that the "error was

never cured, because Mr. King was never advised of his rights and was never given an opportunity to reconsider his decision to discharge his first attorney." Under these circumstances, the court did not comply with the Rule prior to discharging counsel, and compounded this error by failing to cure the court's initial failures. We must reverse Mr. King's convictions and remand for a new trial.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY MONTGOMERY COUNTY.