UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1434

September Term, 2014

CRAIG SMITH

v.

STATE OF MARYLAND

Wright,
Reed,
Alpert, Paul E.
(Retired Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: July 22, 2015

A jury in the Circuit Court for Montgomery County found Craig Smith, appellant, guilty on charges of attempted first-degree murder, first-degree assault, and first-degree burglary. The court sentenced appellant to serve forty years for attempted murder, a concurrent twenty years for assault, and a consecutive twenty years for burglary.

In his timely filed appeal, appellant raises two questions for our consideration:

1. Did the circuit court err by failing to comply with Maryland Rule 4-215(e)?

2. Must the sentence for first-degree assault merge into the sentence for attempted first degree murder?

Because we agree that appellant's sentence for first-degree assault should have been merged into his sentence for attempted first-degree murder, we shall vacate the sentence imposed by the court for appellant's assault conviction. Discerning no other reversible error or abuse of discretion, we shall otherwise affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS

On August 26, 2013, around 3:00 a.m., appellant entered the home Nancy Bise shared with her teenage sons and young daughter in Gaithersburg, Maryland.[1] Appellant came into the bedroom where Ms. Bise was in bed watching television and began stabbing her in the

[1] Appellant and Ms. Bise had previously been romantically involved. They resided together for approximately seven years and had a young daughter . Appellant and Ms. Bise broke up on August 18, 2013, and appellant moved out of the apartment they shared. Appellant told Ms. Bise that he had thrown away his key to the apartment. After appellant moved out, he and Ms. Bise continued to fight about appellant's visitation with their daughter and Ms. Bise's relationship with another man. Prior to the assault, appellant left threatening messages on Ms. Bise's phone, indicating that he was going to kill her.

head, stomach, and back. Ms. Bise screamed for help and her son called 911. Appellant fled the apartment.

Ms. Bise identified appellant as her attacker to the responding officer, who immediately issued a be-on-the-lookout notice for appellant. Ms. Bise was taken by ambulance to Suburban Hospital. At the hospital, Ms. Bise was treated for eight stab wounds to her head, back, and abdomen. Ms. Bise also suffered a broken finger and a ruptured blood vessel that caused blood to accumulate in her chest. Several of the wounds sustained by Ms. Bise were potentially fatal.

After failing to stop when the police signaled him to pull-over, appellant was apprehended and arrested within an hour of the attack. A key to Ms. Bise's apartment was recovered from his pants pocket. In the course of a warranted search of appellant's vehicle, the police recovered a knife and a sweatshirt. The recovered items were tested for the presence of deoxyribonucleic acid ("DNA"). Evaluation of the DNA profiles obtained from the knife indicated that Ms. Bise was the source of the major DNA profile obtained from a swab of the knife blade. Appellant was a major contributor to the DNA profile obtained from a swab of the knife handle. Ms. Bise's DNA was also consistent with the DNA profile obtained from a swab of a stain on the sweatshirt's sleeve. Appellant was identified as a major contributor to the DNA profile obtained from the inside neck area of the sweatshirt.

DISCUSSION

I. Compliance with Md. Rule 4-215

Appellant contends that the circuit court failed to adhere to the requirements of Md. Rule 4-215, following his express request to discharge his attorney at a hearing on June 20, 2014, seventeen days before his trial began. Specifically, appellant asserts that the circuit court failed to ask him to "explain his reasons for requesting to discharge his counsel," and "did not make a finding that the reasons were either meritorious or not meritorious."

We note briefly that appellant was initially represented in this case by an attorney from the Public Defender's Office. In February of 2014, the Public Defender's Office discovered that they could not represent appellant because of a conflict of interest with an existing client. Consequently, at a hearing on February 28, 2014, only three days before appellant's trial was scheduled to begin, the Public Defender's Office withdrew its representation and made arrangements for appellant's defense to be handled by private counsel. Because defense counsel had only a very limited time to prepare before the assigned trial date, the circuit court recommended that appellant's trial be postponed. The postponement, however, had the effect of setting appellant's trial date more than 180 days after his first appearance in court.[2]

[2] The State is required under Maryland Code (2001, 2008 Repl.Vol.), Criminal Procedure Article ("CP") § 6-103, and Maryland Rule 4-271(a), to bring criminal cases to trial within 180 days of a defendant's first appearance in the circuit court. In *State v. Hicks*, 285 Md. 310, 334-38 (1979), the Court of Appeals held that the provisions of the predecessor statute to CP § 6-103 and the substantively identical provisions of the predecessor rule to Maryland Rule 4-271(a) were mandatory, and further held that dismissal of the charges (continued...)

Following an extensive colloquy between appellant and the administrative court, during which appellant repeatedly expressed that he wanted to proceed with trial on March 3, 2014, the court found, over appellant's protestations, that there was good cause to postpone appellant's trial. The court reset appellant's trial to begin on July 7, 2014.

At a subsequent hearing on June 20, 2014, the following colloquy occurred:

> [DEFENSE COUNSEL]: . . . I would represent to the Court that [appellant] has indicated to me that he would like to address the Court in this matter.
>
> THE COURT: Sure. All right, please stand. What would you like to say?
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> [APPELLANT]: Sir, I'm not a lawyer. I don't know too much, but in my hist [sic] date, I wanted to go on with the trial. And I didn't want him as an attorney. And it was forced up on me by the other judge. And then the prosecutor, he said he wouldn't ready [sic]. So basically, they overrode my judgment. I don't know,
>
> THE COURT: Okay. Your judgment about what?
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> [APPELLANT]: About that I wanted to go to trial March the 3rd.
>
> THE COURT: March the 3rd?
>
> [APPELLANT]: Yes.
>
> THE COURT: Okay. So let's see. All right, so on February 28th, there was a hearing before Judge Debelius who granted your motion to actually postpone this hearing.
>
> [DEFENSE COUNSEL]: No, it was counsel's motion, Your Honor.

[2](...continued)
pending against a defendant was the sanction for a violation of the statute's mandate. Appellant's *Hicks* date was March 21, 2013. Appellant does not claim any error in the circuit court's violation of the *Hicks* 180 day rule in the instant case.

THE COURT: Yes. Exactly, that's what I mean. Because, it looks like you had another attorney in this case. Mr. Gambrill.

[APPELLANT]: Yeah. Mr. Gambrill too. I got it written down here. Mr. Gambrill basically withdraw from the case because of, I guess -

THE COURT: Conflict.

[APPELLANT]: Personal confidence. But I had talk. When I talked to Mr. Gambrill and I asked him to withdraw and ask the supervisor for a *pro bono* lawyer, he told me he would never give me now because my case is a no-win situation no way.

THE COURT: Okay. Well, no one from the public defender would tell you they wouldn't give you a lawyer. They may have told you that you wouldn't get another lawyer from their office. So, Mr. Gambrill actually is employed by the [O]ffice of [P]ublic [D]efender. He's an actual employee of their office.

[APPELLANT]: Yeah.

THE COURT: So, they assign the lawyer to represent you from their office. If you decide to not use that attorney, the public defender's service will still provide you with a lawyer, but it won't be an actual employee of their firm. We have other lawyers in the Rockville area that handle those matters and [defense counsel's] one of them. So that's why [defense counsel] got appointed to your case.

[APPELLANT]: Then I told him I didn't need him in front of the other judge.

THE COURT: Okay.

[APPELLANT]: Now the judge told me he had so many years as a legal aide, so many years as a public defender, so many years as a judge, and he said in his experience he feel that I did need a lawyer.

THE COURT: Okay, so I guess just for me to clarify what you are saying. Are you telling me that you want to represent yourself at this trial?

[APPELLANT]: I wanted to. And then you had your clerk call to keep me on your ballot. I felt that was bias too.

THE COURT: Okay.

[APPELLANT]: I would like to have a change of venue.

THE COURT: Okay. Now, do you know what that means, a change of venue?

[APPELLANT]: It mean another judge, right?

THE COURT: No. It doesn't mean another judge.

[APPELLANT]: What it mean another county?

THE COURT: It means another county.

[APPELLANT]: Yeah, well.

THE COURT: So, let's see. So nothing that my clerk did would cause you to be assigned to this court. I was assigned. This is a Track 4 case means that the case is specifically signed [sic] to a judge from the very beginning.

[APPELLANT]: Yeah.

THE COURT: So your case started back in September of 2013 and because I was one of five judges in the criminal rotation -

[APPELLANT]: Yes, sir.

THE COURT: -- I was randomly assigned to this case.

[APPELLANT]: Okay, sir.

THE COURT: So nothing that my clerk did, cause [sic] that to happen.

[APPELLANT]: Okay.

THE COURT: It was just a computer random assignment and my name ended up on the jacket. That's how it works.

[APPELLANT]: Well I'm saying you are asked to stay on this ballot when you had family court the following week of July.

THE COURT: Right. So what I told everyone in the cases that I'm switching in to Family Court in July and that if both parties ask that I keep the case, I'll keep the case. If not, it will be assigned to someone else. I don't care whether I keep it or not.

[APPELLANT]: Okay, sir.

THE COURT: That's the administrative rule that is set up by the Administrative Judge of our court, Judge Debelius. So that's how that works. I wasn't asking to keep it. I don't care if I keep it or not. I got plenty of cases to do.

[APPELLANT]: I believe that, sir.

THE COURT: But once a judge rotates out of criminal into the next rotation, the only way that the case will stay with me is if both sides ask that be done. And apparently that was done in this case, because I still have it. So, I understand what you are telling me now, so my question is what are you asking to do today? What do you want to do today?

[APPELLANT]: Well, I guess I am asking for a motion for a change of venue, if it's possible?

THE COURT: Okay we'll start with this. Let's start with the attorney issue.

[APPELLANT]: Attorney issue?

THE COURT: So [defense counsel] is your attorney.

[APPELLANT]: No, I didn't want him as an attorney. I never wanted him as an attorney.

THE COURT: Okay, I'm not asking whether you wanted him. I'm telling you that he is your lawyer. So, the question now is do you want to represent yourself? Do you want to hire your own attorney or do you want to keep [defense counsel]? Those are like the three choices that you have. If you discharge [defense counsel], you might not be assigned someone else from the public defender, because now this is the second one that you have been through. You can always hire your own lawyer, or you can represent yourself. All three of those are your choice. So I'm not sure which of those you are asking for. It sounds like you're raising issue with me and you're telling me you have some complaints, but I'm trying to figure out what is the remedy that you're looking for. What is the answer you're looking for? Are you looking to represent yourself at the trial?

[APPELLANT]: Well I would have represented myself because he wouldn't prepare. He should be prepared now for 180 days.

THE COURT: Okay. Let's see. When is the trial date?

[DEFENSE COUNSEL]: 7th of July, Your Honor.

THE COURT: Okay. So the trial date is coming up in three weeks. You're not a lawyer. You've probably haven't [sic] had little to no legal training. So at this point, the options are going to be if you discharge [defense counsel] as your attorney, then more than likely, unless you hire someone real fast, you're going to be representing yourself at the trial on July 7th. I don't think that's a good idea, but that really [sic] your choice. [Defense counsel's] been a defense lawyer in this county for 35 or 40 years. For I've known him for most of that time. So he regularly will handle cases that are assigned to him from the public defender, because he is an experienced criminal defense lawyer. But as I say, because I don't know all the public defender policies, but I would guess that because they initially assigned someone from their office and now they've assigned a second person, I don't know if they are going to assign a third one. That's really up to them. I'm guessing that they might not do that. I don't know. Have you talked to them about that?

[APPELLANT]: No, I haven't talk to them about anything.

THE COURT: Okay. So, do you have any - well what is your - I know you didn't ask for [defense counsel], but now that he is your lawyer, are you telling me today that you want to discharge him?

[APPELLANT]: I guess I am going to discharge him. Ain't like he really need me, if we need each other.

THE COURT: Well I know he doesn't need you.

[APPELLANT]: I know.

THE COURT: The question is do you need him?

[APPELLANT]: I don't -

THE COURT: You need a lawyer because you are not a lawyer. Do you know how to defend a criminal case?

[APPELLANT]: No, I don't.

THE COURT: So how would you plan on doing it if you don't know how to do it?

[APPELLANT]: I was going to let what happen, happen. I'm already going. If I'm going to lose, I'm going to lose anyway. I don't think I need a hangman with me.

THE COURT: Okay. What does that mean?

[APPELLANT]: I don't think I need a person to walk me to the gallery [sic] and just pull the rope.

THE COURT: Well, he won't be doing that. I would guess that you probably don't have a lot of knowledge about what your rights even are. And one thing that [defense counsel] is going to do is protect all the rights that you have. You probably don't know a lot about rules of evidence which he'll be protecting you during the trial from inadmissible evidence from coming in against you. You probably don't know a lot about the rules of criminal procedure. He'll be following those to make sure that all of your rights are

protected. So what a lawyer does is he understands all of your rights that you have in a criminal case. He understands what the evidence is that the State has, and he does his best to protect you in a trial. You understand that?

[APPELLANT]: I have some understanding about that, I guess. But I don't see him. I ain't been seeing him. I don't think. I don't know, sir. I really don't.

THE COURT: Okay.

[APPELLANT]: Because I'm not a lawyer. So, you're right. I am not a lawyer.

THE COURT: All right. Well let me put it to you this way. I've been in this court system for 32 years. I've never seen a criminal trial where someone represent themselves go well. I just never seen that happen. And it's not because you're not a smart guy. It's that you don't know the rules.

[APPELLANT]: I know I'm not a smart guy. Only thing I am saying is, you know, I was coerced into taking an insanity plea that I didn't want to take.[3] I was explaining something to my attorney and he was like, "well what you want, an insanity plea?" I was asking him. I don't know.

THE COURT: Okay.

[APPELLANT]: And he made me go for an insanity plea which I think that was kind of like optimistic and stupid because you lose all your rights on that.

THE COURT: Well, no you don't. By filing that plea you don't lose any of your rights. What it does is that it raises the potential of another defense to a case that you would not otherwise have. So if your lawyer had not raised that issue with you, then you would have been giving up that right. But by raising it, that gives him the opportunity to explore it, have an evaluation done, and see if there is a basis to follow an insanity defense. So he raised that to protect your interests, to protect your rights. Do you understand that?

[3] Appellant's public defender initially entered a plea of "not criminally responsible" on appellant's behalf. The plea was later withdrawn by counsel at a hearing on January 17, 2014.

[APPELLANT]: Somewhat.

THE COURT: So by raising the defense of not criminally responsible, you don't give up any other rights you have. You don't give up any other defenses that you have. It allows you one more potential defense that you could raise. And if he didn't file that line and raise that, he would have given that up altogether. So by doing that he actually gave you more protection that he would otherwise.

[APPELLANT]: Okay. What about due process, legal seizure and search without a warrant.

THE COURT: Okay. So I don't know a lot about the facts of this case. So what's happen [sic] so far, there's been discovery, meaning the State has provided to your attorneys all the information they have about this case. So were there searches and seizures in this case?

[PROSECUTOR]: There was, Your Honor.

THE COURT: Okay. So under the law, you start with the basics that search and seizures require a search warrant. But there's lot of exceptions to that. And so an attorney who understands criminal law would look at the facts of the case and then decide whether or not there is a basis to suppress the evidence. So if the police had either acted without a warrant? Or if they acted outside one of the exceptions to it, then your attorney would have the basis to challenge that in court. So let me give you an example. One of the exceptions to the warrant requirement is that if you get arrested, the police can search you automatically without having to have a search warrant. You understand that?

[APPELLANT]: Yes, sir.

THE COURT: So that's an exception. So police may have an arrest warrant for you, they come, and arrest you and without having to go get a search warrant, they can automatically search you and your immediate surroundings without having a warrant. So that's an exception and there are many others like that. That's just one. So someone who is a trained lawyer and someone who's a trained criminal defense lawyer knows what the law is, knows what the exceptions are. They look at the facts of the case and then they have to decide is there any factual basis to challenge the search and seizure that

occurred in this case. So [defense counsel], I can't tell you how many hearings I've had with [defense counsel], as a lawyer and as a judge, where he's raised issues and we've had hearings. So, I don't know the facts of the case, but he's looked at the evidence in this case and doesn't see any basis for suppressing any of the evidence. So that's why he's indicated that there is no need to have a hearing today. You understand that?

[APPELLANT]: I guess so, sir. I guess I just got to go with-

THE COURT: Well, I'm just trying to explain to you how things work.

[APPELLANT]: Okay.

THE COURT: Because this is new to you.

[APPELLANT]: Yes. Because last time, it was a hierarchy and, you know, I'm like a slave. I don't know.

THE COURT: Well, let's put it this way. Just because there was a search and seizure doesn't mean that something was done improperly. The law authorizes search and seizure in under many circumstances. So at a motion to suppress, that is the time of a trial to challenge things that are done improperly, not properly. If something is done properly, then there is no basis to suppress the evidence. If it is done improperly, then the judge can suppress the evidence. So it's the lawyer's job to know the law and look at the facts and decide what is challengeable or not. And that's why we set hearings like today. You understand that?

[APPELLANT]: I guess so.

THE COURT: So what other concerns you have? You just mentioned search and seizure.

[APPELLANT]: That's it, I guess.

THE COURT: So, what is it that you want to -- given the fact that your trial is in July 7th, you still, as we sit here today, you have a right to represent yourself. You have a right to hire a lawyer and [defense counsel] will be your lawyer, if you want to keep him. So I can't make that choice for you. I can

> just tell what you what your options are, and that's really up to you. So you don't have to decide that today either, if you don't want to. If sometime between now and the trial date you decide you want to represent yourself, you let [defense counsel] know. We'll bring you back to court. I'll discharge him and you can be on your way.
>
> [APPELLANT]: Okay.
>
> THE COURT: Okay. So I understand that you had some ideas that have been running through your head and you have some concerns. Do you have anything else that you want to talk to me about today, so I can try to explain things to you?
>
> [APPELLANT]: No sir.

Maryland Rule 4-215, governing a criminal defendant's discharge of counsel provides, in pertinent part:

> (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)(l)-(4) of this Rule if the docket or file does not reflect prior compliance.

We examine a trial court's compliance with the requirements of Md. Rule 4-215 *de novo*. *Gutloff v. State*, 207 Md. App. 176, 180 (2012). Strict compliance with every

provision of the Rule is required in order to support a trial court's determination that an individual's waiver of his or her right to counsel is made knowingly and voluntarily. *See id*. (citing *Webb v. State,* 144 Md. App. 729, 741 (2002)); *Broadwater v. State*, 401 Md. 175, 182 (2007) ("Strict, not substantial, compliance with the advisement and inquiry terms of the Rule is required in order to support a valid waiver."); *Johnson v. State*, 355 Md. 420, 452 (1999) (characterizing Md. Rule 4-215 as "a bright line rule that requires strict compliance in order for there to be a 'knowing and intelligent' waiver of counsel by a defendant."). So long as the court has strictly complied with the provisions of the Rule, however, we review the determinations made by a trial court in the application of the Rule, "only for an abuse of discretion." *Peterson v. State*, 196 Md. App. 563, 573-74 (2010) (citing *Grant v. State,* 414 Md. 483, 491 (2010)).

The provisions of Md. Rule 4-215 are triggered only if a criminal defendant indicates a "present intent to seek a different legal advisor[.]" *See* Williams v. State, 435 Md. 474, 491 (2013) (discussing the Court's holding in *State v. Davis*, 415 Md. 22, 33 (2010)). In previous cases, the Court of Appeals has clarified that a defendant need not "utter a talismanic phrase," *Leonard v. State,* 302 Md. 111, 124 (1985), or "state his position or express his desire to discharge his attorney in a specified manner" in order to trigger the provisions of Md. Rule 4-215. *Davis,* 415 Md. at 32. Nor does a defendant's request to discharge an attorney have to be explicit. *See State v. Hardy,* 415 Md. 612, 623 (2010) ("A defendant makes such a request when his or her statement constitutes more a declaration of

dissatisfaction with counsel than an explicit request to discharge."). Instead, Md. Rule 4-215(e) is triggered by "any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel." *See Williams*, 435 Md. at 486-87 (citing *State v. Taylor,* 431 Md. 615, 634 (2013); *Hardy,* 415 Md. at 623; *Davis,* 415 Md. at 31; *Leonard,* 302 Md. at 124). "[W]hen it is (or should be) clear objectively that a defendant is making a request to discharge counsel, 'the defendant must be provided [ ] with a forum in which he or she (and/or counsel) may explain the underlying reasons for the purported request to discharge counsel.'" *See Williams*, 435 Md. at 487 (quoting *Taylor,* 431 Md. at 633).

We agree that in the course of his exchange with the circuit court on June 20, 2014, appellant clearly stated that he had never wanted his assigned attorney, and that he intended to discharge defense counsel. These words triggered the circuit court's responsibility to "permit the defendant to explain the reasons for the request." Md. Rule 4-215(e). Neither the plain language of the Rule, nor our caselaw interpreting the Rule require the court to explicitly question an individual regarding the reasons underlying his or her request to discharge counsel. As the Court of Appeals has explained:

> That the court did not ask a question that led to this explanation is inconsequential on this record. The purpose of the requirement that the court inquire into the reasons for a request to discharge defense counsel is to elicit precisely the kind of response that Hardy gave here voluntarily. That response having been given as fully as Hardy desired and voluntarily, the trial judge in

> this case fulfilled his duty to provide Hardy the opportunity to explain his request.

Hardy, 415 Md. at 630.

During the course of his conversation with the circuit court, appellant volunteered several potential reasons that he was dissatisfied with his attorney. First, appellant expressed that he "didn't want [defense counsel] as an attorney[,]" and that he "never wanted [defense counsel] as an attorney." Appellant was clearly referring to the unusual circumstances that led to the appointment of defense counsel, a private attorney who was assigned to represent appellant on the eve of trial, when the Public Defender's Office discovered that its attorneys were unable to represent appellant due to a conflict of interest caused by the office's ongoing representation of one of the juvenile witnesses who was scheduled to testify against appellant at his trial. Appellant was perturbed that the assignment of his new attorney led the court to "over[ride] his judgment" and postpone his trial so that defense counsel would have an adequate opportunity to prepare. Appellant explained to the court that he had tried to discharge defense counsel at the hearing on February 28, 2014, so that he could go to trial on March 3, 2014, as previously scheduled, but that the administrative judge said that he "did need a lawyer."

The circuit court explained that, whether appellant wanted him or not, defense counsel was his attorney of record. The court then told appellant that he had several options: represent himself, hire another attorney, or keep defense counsel. The court also left open

the option that appellant might be able to have another attorney assigned by the Public Defender's Office, but that he would have to talk to the Public Defender's Office about that.

Appellant then said that he wanted to discharge counsel because it "[a]in't like he really need me, if we need each other[,]" and that he didn't "need a hangman with me . . . to walk me to the gallery [sic] and just pull the rope." The court then spent some time explaining to appellant how defense counsel could help him during trial, by protecting his rights, objecting to inadmissible evidence, making sure the rules of procedure were followed, and "do[ing] his best to protect you at trial."

Appellant next proffered that he "ain't been seeing [defense counsel,]" and that he had been "coerced into taking an insanity plea that [he] didn't want to take." The circuit court addressed appellant's concerns regarding the insanity plea and answered his subsequent question about excluding evidence obtained without a search warrant. The court then reiterated that appellant had the option to represent himself, hire a lawyer, or stay with defense counsel, but emphasized that appellant did not have to make his decision right then. The court advised appellant to think about it, and said that if appellant later decided that he still wanted to discharge his attorney, he could let defense counsel know and defense counsel would bring him back to court so the court could discharge him. Appellant apparently accepted the circuit court's advice that he take some time to consider his options and abandoned his earlier request to immediately discharge defense counsel.

Based on the foregoing, we are persuaded that the circuit court provided appellant an ample opportunity to explain his reasons for requesting to discharge defense counsel as required by Md. Rule 4-215(e). *See Hardy*, 415 Md. at 630 (concluding that the circuit court, having provided the defendant the opportunity to explain his request to discharge counsel, had fulfilled its obligations under the Rule).

We are further persuaded that the circuit court did not err by failing to make an express finding on the record stating whether the explanations proffered by appellant were "meritorious." When appellant abandoned his request to discharge counsel, he effectively withdrew the matter from the court's consideration, thereby ending the court's obligations under the Rule.[4]

We further note that, even if the circuit court had been obliged to make such a determination, the plain language of Md. Rule 4-215(e) does not require that the court make an explicit finding on the record regarding whether the reasons underlying an individual's request to discharge are "meritorious." When an explicit finding is required, it is reflected in the plain language of the Rule.[5] In this case, since the rule does not explicitly require

[4] Appellant does not assert that he subsequently informed either his attorney or the court that he wanted to discharge his attorney, after all. Nor do we discern any other evidence in the record suggesting that appellant continued to be dissatisfied with defense counsel that might have required the circuit court to again inquire regarding appellant's desire to waive counsel pursuant to Md. Rule 4-215(e).

[5] For example, part (b) of Md. Rule 4-215 expressly provides that a trial court may not accept a waiver unless "the court determines *and announces on the record* that the defendant is knowingly and voluntarily waiving the right to counsel." (Emphasis added).

findings on the record regarding the merit of a request to discharge, the fact that the circuit court did not use the words "meritorious" or "nonmeritorious" would not constitute reversible error.[6]

Based on our review of the record, we are persuaded that, by the end of the discussion between the circuit court and appellant on June 20, 2014, appellant no longer had a present intent to discharge his attorney. We further conclude that the court fully satisfied the requirements of Md. Rule 4-215(e) that were triggered by appellant's initial request to discharge defense counsel. Discerning no error or abuse of discretion, we affirm the judgments of the circuit court.

II. Merger of First-Degree Assault into Attempted First-Degree Murder

The jury convicted appellant of attempted first-degree murder, first-degree assault, and first-degree burglary. At sentencing the circuit court stated, "I guess the first-degree assault and the attempted murder would merge because they are similar fact pattern." The State agreed that the offenses merged for sentencing purposes. The court then sentenced

[6] As this Court has previously opined, whether there is a finding that a reason is "meritorious" or "not meritorious" makes little difference under Md. Rule 4-215(e). "With one minor difference, the judge, in either event, has to do almost precisely the same thing. The meritorious reason and the non-meritorious reason produce essentially the same result . . . ." *Randolph v. State*, 193 Md. App. 122, 128 (2010). This analysis is especially true in cases, such as the one before us, where there was no possibility that trial would begin on the same day the defendant requested to discharge counsel. *See id*. (explaining that, because it was not necessary for the court to grant a continuance, there was no difference in the court's obligations under the Rule). Appellant requested to discharge his attorney at a hearing on June 20, 2014. His trial did not begin until seventeen days later, on July 7, 2014.

appellant to serve forty years for attempted murder, a concurrent twenty years for assault, and a consecutive twenty years for burglary.

Appellant now contends that "the sentence for first-degree assault must merge into the sentence for attempted first-degree murder." The State agrees that the sentence for first-degree assault should merge for the purposes of sentencing.

This Court has previously held that the crimes of first-degree assault and attempted first-degree murder merge for the purposes of sentencing. *See Christian v. State*, 405 Md. 306, 321-22 (2008) (discussing previous holdings indicating that, for the purposes of merger, first-degree assault of the intentionally causing or attempting to cause serious physical injury modality is a lesser included offense of attempted voluntary manslaughter); *Dixon v. State*, 364 Md. 209, 240-41 (2001) (holding that first-degree assault of the intent to cause serious harm modality merges into attempted voluntary manslaughter under the required evidence test because the lesser intent to cause serious injury was subsumed by the more serious intent to cause death); *Jenkins v. State*, 146 Md. App. 83, 133-35 (2002), *rev'd on other grounds*, 375 Md. 284 (2003) (concluding that first-degree assault with a firearm merged into attempted first-degree murder under the rule of lenity because both crimes arose out of the same act).

The jury instructions that were provided in this case, demonstrate that the only modality of first-degree assault alleged by the State was of the intent to cause serious physical injury variety. Based on the case law cited above, we are persuaded that appellant's

sentence for first-degree assault should have been merged into his sentence for attempted first-degree murder. We conclude, therefore, that the concurrent twenty-year sentence imposed by the circuit court for appellant's assault conviction, must be vacated.

SENTENCE VACATED AS TO FIRST DEGREE ASSAULT CONVICTION. JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.