UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

Nos. 0078 & 0172

September Term, 2015

RECO LAVAR RIVERS

v.

STATE OF MARYLAND

LATRICE NICOLE CAVIN

v.

STATE OF MARYLAND

Wright,
Leahy,
Friedman,

JJ.

Opinion by Leahy, J.

Filed: July 25, 2016

We consolidated the appeals by Mr. Rico Lavar Rivers and Ms. Latrice Cavin ("Appellants") who were tried and convicted together before a jury on February 25, 2015, in the Circuit Court for Montgomery County. Appellants each discharged their counsel and proceeded to trial *pro se*, defending unsuccessfully against various charges related to their distribution of controlled dangerous substances to two sixteen-year-old girls whom Appellants had lured into their apartment. Rivers was also convicted of one count of fourth-degree sex offense for assaulting one of the girls. Appellants filed this timely appeal. Cavin presents one question for our review:

> I. Whether the trial court erred by permitting appellant to discharge her counsel without complying with the mandates of Maryland Rule 4-215?

Rivers presents two questions[1] for our review:

> I. Did the circuit court err in discharging appellant's counsel without complying with Maryland Rule 4-215 and obtaining a knowing and voluntary waiver?
>
> II. Did the circuit court err in granting the motion to sever filed by appellant's previous counsel after appellant discharged his counsel and sought to withdraw the motion?

As to the common issue concerning discharge of counsel, we hold that the circuit court properly complied with the requirements of Maryland Rule 4-215. We further hold

[1] Rivers presented a third question: "Did the court err in denying appellant's motion for a new trial without a hearing on the grounds that it was not timely filed when it was filed nine days after his conviction?" Rivers withdrew his arguments concerning this question on February 22, 2016. Therefore, we limit our analysis to the above questions.

that the circuit court did not abuse its discretion in granting the motion to sever charges. Affirmed.

BACKGROUND

Appellants lived together in an apartment in Montgomery County with their five children. On July 22, 2014, Appellants invited two sixteen-year-old young women to their apartment to babysit their children. At trial, the young women testified that when they arrived at the apartment, Appellants gave them amphetamines and performed sexual acts in their presence. One of the young women asserted that Rivers kissed her on the cheek and placed her hand on his penis.

On September 18, 2014, a Montgomery County grand jury in Criminal Case No. 125814 indicted Cavin and Rivers on two counts each of distribution of a controlled dangerous substance, and one count each of conspiracy to distribute a controlled dangerous substance. Rivers was also indicted on one count of fourth-degree sex offense and theft of less than $1,000.00 in value for stealing one of the young women's iPhones. Cavin was indicted on two counts of first-degree assault.[2, 3]

[2] More specifically, *count one* charged both Appellants of distributing amphetamine to one of the young women; *count two* charged both Appellants of distributing amphetamine to the second young woman; *count three* charged both Appellants of conspiring to distribute amphetamine; *count four* charged Rivers of committing a fourth-degree sexual offense against the first young woman; *count five* charged Rivers of the theft of the first young woman's iPhone; *count six* charged Cavin of first-degree assault against the first young lady, and; *count seven* charged Cavin of first-degree assault against the second young lady.

[3] Because, as we next explain, Counts 5, 6 and 7 were tried separately, (cont.)

In October, counsel for Rivers and counsel for Cavin filed independent motions to sever. The motion filed on October 21 by Cavin's attorney requested that the case be severed into two different trials—the first to include counts one, two, and three and the second to include counts six and seven.[4] Cavin averred, *inter alia*, that a single trial would require that the State present evidence about one count that would be inadmissible as to another count and that such a course would substantially prejudice her defense. The October 31 motion filed by Rivers's counsel requested that the case be severed into four different trials—the first would include counts one, two, and three; the second would only include count four; the third would only include count five; and the fourth would include counts six and seven. Rivers's motion specifically requested that he be tried separately from Cavin. In support of his motion, Rivers argued, *inter alia*, that "[e]vidence of the charges in counts ONE, TWO, and THREE, count FOUR, count FIVE, and counts SIX and SEVEN is not mutually admissible."

At the February 13, 2015 pre-trial motions hearing, Appellants learned of their attorneys' joint request to postpone the trial.[5] Concerned about the continuing effects of their prosecution on their family, Appellants expressed their request to have their trial go

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we do not include the factual allegations supporting the assault charges against Cavin.

[4] Although Cavin's motion does not explicitly request that she be tried separately from Rivers, we note that her motion was titled "Motion to Sever Offenses and Defendants."

[5] Rivers's counsel requested a continuance because he had another trial scheduled for the same date, and counsel for both Appellants requested more time to review recent discovery provided by the State to further prepare their motions and for trial.

forward on the original date, and notified the court of their desire to discharge counsel and proceed *pro se*. After engaging in an extensive examination of Rivers and Cavin individually regarding their intention to discharge counsel, the court resolved that Appellants made a knowing and voluntary waiver and allowed them to discharge their attorneys.

Although Appellants' attorneys filed motions to sever offenses and defendants, during a February 20 hearing on the motions to sever, Appellants, *pro se*, indicated their opposition to the motions and their wish to be tried together. The court acceded to Appellants' request to be tried together, but granted the motion to sever counts 1 through 4 from counts 6 and 7, and from count 5. The Court ordered the Appellants be tried together on Counts 1 through 4 on the trial date already scheduled for the following Monday on February 23. Throughout this hearing, as well as in other pre-trial proceedings, the court advised Appellants of their right to counsel and the benefits of proceeding with counsel in their case. The court went so far as to warn Appellants that because of the seriousness of the charges, "it just seems that you're really hurting yoursel[ves]." Nonetheless, Appellants reiterated their desire to proceed *pro se*.

Appellants had separate pretrial hearings on February 23, 2014. Their joint trial began that same day. On February 25, 2015, the jury found Rivers guilty of two counts of distribution of a controlled dangerous substance, one count of conspiracy to distribute a controlled dangerous substance, and one count of a fourth-degree sex offense. The court sentenced Rivers to five years of incarceration for each of the two counts of CDS

distribution, five years for conspiracy to distribute CDS, and one year for fourth-degree sexual offense—all to be served concurrently, with all but three years of incarceration suspended.

The jury found Cavin guilty of two counts of CDS distribution and one count of conspiracy to distribute CDS. The court sentenced Cavin to two years of incarceration, all suspended, and three years of probation. Appellants timely appealed to this Court on March 9, 2015. On August 10, 2015, both Appellants, through counsel, filed a Motion to Consolidate Cases for Argument. Pursuant to Maryland Rule 8-421(b) "[a]ll appeals on the same record, whether in the same action or in two or more actions consolidated in the lower court, shall be docketed as one action on appeal." On October 09, 2015, we granted the Appellants' motions and consolidated the cases for argument.

Additional facts are provided in the discussion as they relate to the issues there examined.

DISCUSSION

I.

Maryland Rule 4-215 on Discharge of Counsel

Both Appellants argue that the circuit court did not comply with various parts of Maryland Rule 4-215. Specifically, both Appellants argue that the circuit court did not comply with: (1) Rule 4-215(e)'s requirement that the court give them an opportunity to state their reasons for discharging counsel; (2) Rule 4-215(a)(1)'s requirement that the circuit court inquire about whether they received a copy of their charging documents; and

(3) Rule 4-215(a)(4)'s requirement that the circuit court conduct an inquiry into whether the defendants were making a knowing and voluntary waiver of counsel. Cavin additionally alleges that the trial court did not comply with Rule 4-215(e)'s requirement that the court determine whether her request to discharge counsel was meritorious, or with Rule 4-215(b)'s requirement that compliance with Rule 4-215 is noted in the case file or docket. And Rivers separately alleges that the circuit court did not comply with Rule 4-215(a)(3)'s requirement that a defendant be advised of the nature of the charges and their allowable penalties. Before examining these contentions, we review the applicable law.

Both Article 21 of the Maryland Declaration of Rights and the Sixth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, "'guarantee a right to counsel, including appointed counsel for an indigent, in a criminal case involving incarceration.'" *Broadwater v. State,* 401 Md. 175, 179 (2007) (quoting *Parren v. State,* 309 Md. 260, 262 (1987)). Based on these constitutional provisions, an accused citizen has two independent rights: "the right to have the assistance of counsel and the right to defend Pro se." *Snead v. State,* 286 Md. 122, 123 (1979); *see also Faretta v. California*, 422 U.S. 806, 819-20 (1975) ("The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense."). These rights "are mutually exclusive and [a] defendant cannot assert both simultaneously." *Leonard v. State*, 302 Md. 111, 119 (1985). To implement these constitutional guarantees, the Court of Appeals adopted Maryland

Rule 4-215. *Williams v. State,* 321 Md. 266, 271 (1990). Regarding a defendant's right to discharge his or her counsel, Maryland Rule 4-215(e) provides:

> (e) **Discharge of Counsel — Waiver.** If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a) (1)-(4) of this Rule if the docket or file does not reflect prior compliance.

Md. Rule 4-215(e). Rule 4-215(a) provides that at the defendant's first appearance in court without counsel, "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.
> (5) If trial is to be conducted on a subsequent date, advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.
> (6) If the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing

> pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel.

Md. Rule 4-215 (a)(1)-(6).

Significantly, Rule 4-215's requirements can be satisfied in a "piecemeal, cumulative" fashion by multiple circuit court judges over multiple hearings. *See Broadwater*, 401 Md. at 200-02. As the Court of Appeals reiterated in *State v. Westray,* the rule can be broken down in to three steps:

> *(1) The defendant explains the reason(s) for discharging counsel*
>
> * * *
>
> *(2) The court determines whether the reason(s) are meritorious*
>
> * * *
>
> *(3) The court advises the defendant and takes other action*[.]

444 Md. 672, 674-75 (2015) (italics in *Dykes*) (quoting *Dykes v. State*, 444 Md. 642, 651-54 (2015)). *Westray* instructs that, following a court's determination that a defendant lacks a meritorious reason for discharging counsel, the third step requires that the court give the advisements and adhere to the procedures set forth in Rule 4-215(a)(1)-(4). *Id.* at 675.

We review *de novo* whether the circuit court in this case complied with Rule 4-215. *Gutloff v. State*, 207 Md. App. 176, 180 (2012). Application of the Maryland Rules is generally accorded *de novo* review, and especially because Rule 4-215(e) demands strict compliance, *see State v. Hardy,* 415 Md. 612, 621 (2010), a trial court's departure from its mandates constitutes reversible error. *Id.* (quoting *Williams,* 321 Md. at 272).

A. Rule 4-215(e)'s Reasons For Discharging Counsel

Both Appellants argue that the circuit court did not properly allow them to explain their reasons for discharging counsel. Maryland Rule 4-215(e) requires that a court "permit a defendant to explain his reasons for requesting to discharge an attorney." Md. Rule 4-215(e). This Court has previously noted that "the onus is on the trial judge to ensure the reason for requesting dismissal of counsel is explained." *Joseph v. State*, 190 Md. App. 275, 285, 288 (2010) (citing *Hawkins v. State*, 130 Md. App. 679, 687 (2000)) (determining that the trial court violated Rule 4-215 where it "did not ask for or consider appellant's reasons for wanting to [discharge his counsel] before denying the request").

1. Rivers

Rivers contends the circuit court failed to comply with Rule 4-215(e) because it did not ask him "to provide *all* of his reasons for seeking to discharge his counsel" and instead proceeded under the assumption that his only reason was a desire not to postpone his trial. (Emphasis added). Rivers notes that he informed the court that he also wished to dismiss his attorney because the attorney "did not have time to go through with the new discovery," and Rivers contends that the court should have inquired as to whether there were other meritorious reasons that "may have warranted appointment of substitute counsel."

The State answers that Rivers had three pre-trial hearings during which the issue of his waiver-of-counsel was addressed, but that he did not provide any other reasons for discharging his attorney until his first day of trial. The State asserts that Rivers bore the burden of offering all of his reasons for discharging the attorney when given the

opportunity. (Emphasis added). Citing *Hardy*, 415 Md. at 628, the State further argues that Rule 4-215 only requires that the court provide a defendant with the opportunity to offer an explanation, but not that the court "probe the defendant with questions until the defendant has given a fuller answer."

We note that *Hardy* is distinguishable from the instant case because the defendant in *Hardy* sought to discharge counsel after the trial had begun, and, thus, Rule 4-215 did not apply. *See Hardy*, 415 Md. at 622; *see also State v. Brown*, 342 Md. 404, 428 (1996) (concluding that "Rule 4–215(e) does not apply to decisions to discharge counsel after trial has begun"). We examine, rather, those cases that interpret the duties Rule 4-215 places on a trial court when a defendant seeks to discharge counsel before trial.

In *State v. Taylor*, during a pre-trial postponement request hearing, Taylor's public defender explained that Taylor was requesting a postponement because he wished to replace his public defender with a private attorney who had successfully defended Taylor in an unrelated matter. 431 Md. 615, 622-23 (2013). Because the case had been postponed repeatedly, the circuit court denied the postponement. *Id*. at 623. Taylor brought up his request for postponement at a second hearing the following day, during which the circuit court established that the public defender was prepared to go to trial during the originally-scheduled trial date, but that the private counsel would need a one-week continuance. *Id*. at 624. Noting that the case was a retrial and that the public defender was ready for trial, the circuit court again denied the request. *Id*. 624-25. At a third pre-trial hearing, the State asked the circuit court to resolve Taylor's request to

discharge the public defender and retain private counsel pursuant to Rule 4-215. *Id*. The circuit court then addressed Taylor, summarized his stated reasons for replacing counsel and asked "'am I missing anything?'" *Id*. at 625. Taylor responded "'Um—that pretty much sums it up.'" *Id*. at 626. The circuit court then allowed the public defender to further question Taylor about the reasons for discharge and advised Taylor that his choice was either to keep the public defender or proceed *pro se*. *Id*. Stating that he would proceed with the public defender if he didn't have another choice, Taylor opted to keep the public defender as counsel. *Id*. The case was then assigned to another judge who, in a separate the hearing found that "there[was] no meritorious reason for the discharge" and explained that Taylor could replace counsel, but that the private counsel had to take over the case immediately. *Id*. at 627. Taylor was ultimately found guilty and appealed his case, arguing that the circuit court failed to comply with Rule 4-215(e) because it did not inquire whether he had a meritorious reason to discharge counsel. *Id*. at 628.

In its analysis, the Court of Appeals noted that "[p]ursuant to Md. Rule 4–215(e), when a defendant expresses a desire to discharge his or her counsel in order to substitute different counsel or to proceed self-represented, a court must ask 'about the reasons underlying a defendant's request to discharge the services of his trial counsel and provid[e] the defendant an opportunity to explain those reasons.'" *Id*. at 631 (quoting *Pinkey v. State*, 427 Md. 77, 88 (2012)). The Court added that, "once a defendant makes an apparent request to discharge his or her attorney, the trial judge's duty is to provide the defendant with a forum in which to explain the reasons for his or her request." *Id*. The Court

concluded that the circuit court complied with Rule 4–215(e) "by providing Taylor a forum in which to provide an explanation." *Id*. at 640. The Court concluded that "[a] trial judge has no affirmative duty to rehabilitate a defendant's expression of why he or she may desire to discharge his or her counsel; rather, the trial judge has the duty 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." *Id*. at 642 (citation omitted).

We conclude that Rule 4-215 only requires that a trial court provide a defendant with the opportunity to offer an explanation for discharging counsel, consider the merits of the defendant's stated reason(s), and decide rationally whether the reason is meritorious. *See also State v. Graves*, 447 Md. 230, 242 (2016) (quoting *Taylor*, 431 Md. at 631) (explaining that "[i]nquiry into the reasons for the request to discharge counsel is vitally important because the reasons given dictate how the court proceeds under the rule[,]" but relying on *Taylor* to conclude that Rule 4-215(e) "'imposes an affirmative duty on the circuit court to provide a 'forum' in which the defendant can 'explain the reasons for his or her request.'"); *Gonzales v. State*, 408 Md. 515, 531 (2009) (citing *Williams v. State*, 321 Md. 266, 273 (1990) (explaining that "[u]nder the Rule, when a defendant requests permission to discharge an attorney whose appearance has been entered in his or her case, the court must provide the defendant an opportunity to explain why the defendant wishes to discharge that attorney.").

Rivers informed the circuit court that he wanted to discharge his counsel during a pre-trial hearing on February 13, 2014. Following a private conversation between Rivers and his attorney, the following exchange occurred:

> [RIVER'S ATTORNEY]: Your Honor, Mr. Rivers would like me to strike my appearance. He would like to represent himself.
>
> THE COURT: Mr. Rivers, as so –
>
> [RIVER'S ATTORNEY]: Because he [wants] the case, he wants to go to trial on the [23]rd. He has other matters which he believes are affected by the date and I cannot do that date, and in fact, I'm, I'm already double-booked almost up to June.
>
> THE COURT: All right, but Mr. Rivers, let's, let's talk about that. You have been provided with an attorney by the office of the public defender, and of course you have a right to be represented by counsel. These offenses are pretty serious offenses. There is two counts of distribution of a narcotic drug. There's a count of conspiracy. Fourth degree sex offenses. Theft under a thousand. If you were to be convicted of these offenses, the maximum penalty is very substantial. It would be many years in prison. I'm not saying you would receive the maximum penalty, but I'm just saying that you are exposed to that possibility. And I think the, the distribution counts both carry a maximum penalty of 20 years in jail. So, you've got two of those plus conspiracy. That's a maximum of 60 years, and that doesn't count the, the sex offense or the theft. Now, you have, part of the right to an attorney is also that you have a right not to have an attorney, and you can hire another attorney if you want to do that, but unless [your attorney] is removed for cause, and I'm not hearing a reason he be removed for cause, the public defender's office is not going to assign you another attorney. So, if you're asking me to remove [your attorney], and if I agree to do that, you understand that's going to leave you without an attorney in this case. Are you asking me to do that?
>
> MR. RIVERS: Yes, sir.

> THE COURT: And why is it that you want to represent yourself in this case?
>
> MR. RIVERS: I understand the 60 years that you talked about just a second ago. If I've got to get 60 years to juvenile confinement, then I'll do 60 years. I believe that God is going to oversee this whole situation. I've got five boys that I take care of . . . . [E]verything depends on what's going to happen on the 23rd. They've got the date set. CPS, the housing authority is just so, I mean, and then, throughout the weeks and the months – this thing's been going on for eight months, the tragedy, the trauma that my kids and her and me, like, it's unbearable, like, it's, it's been driving us, like, insane. We, I just want to get it over and done with. I just believe that if I could step up, speak the truth, whatever bad decision that I did make, I take responsibility for it, and I, I, that's how I stand. That's what I believe.

After this exchange, the court informed Rivers of the disadvantages of dismissing counsel. The State then interjected to inform Rivers that separate housing and custody proceedings would not be resolved by resolving the criminal matter. The court later reiterated this information to Rivers, and Rivers stated that he understood.

During another pre-trial hearing on February 20, Rivers repeated the fact that he wanted to proceed with the original trial date as his reason to discharge counsel. At that hearing, the court made the following inquiry of both Cavin and Rivers regarding their intentions:

> THE COURT: . . . I'm making this inquiry of you to make sure that you're knowingly voluntarily and intelligently making this waiver of counsel which, on the face of these charges, is actually not a very wise decision. That's the Court, that's me looking at this from your eyes even though you may not see it through those same eyes. I'm trying to tell you what I think so that hopefully you will make an decision that's, is actually in your interest as opposed to what you think is in your interest. So, I'm not trying to make the decision for you. I'm trying to give you information, so of which you're already pointing

> out to me about this severance motion and about trying, being tried together or not together. I mean, it shows to me that you don't really have a grasp, quite frankly, of all these nuances. That's why, I mean, I can't make you do things. All I can do is make sure you're vol -- knowingly, voluntarily and intelligently waiving your right to counsel, but if that's what you want to do, in light of all the consequences to your lives, each or both potential, upon a conviction, you know, we'll, we'll proceed as you're requesting. But it just seems that you're really hurting yourself.
>
> MR. RIVERS: Thank you, Your Honor, for the enlightenment. I, I just, I, I, I don't know if it's just the just, I don't know if it's the kids. I, I, I, don't know if it's just like, you know, I know they say courtrooms are like casinos. I, I, I'm ready to go to jury trial Monday just pro se.
>
> THE COURT: Okay. Ma'am?
>
> MS. CAVIN: Me, too.

The conferences set out above demonstrate that Rivers provided the Court with the reason he wanted to discharge his counsel. At the initial pre-trial hearing on February 13, after the court reviewed the serious charges against Rivers, the court asked "[a]nd why is it that you want to represent yourself in this case?" At the pre-trial hearing on February 20, Rivers repeated and confirmed the reason that he gave at the prior hearing for discharging counsel. The reason given by Rivers was not so illogical or incomplete such that it would cue the court to ask if there was really another reason Rivers wanted to discharge his counsel. As noted above, Rule 4-215(e) merely requires that the trial court "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. Therefore, because the circuit court provided Rivers with a forum where he

could explain the reasons for his request, *Id*. at 631, we conclude that the circuit court properly provided Rivers with the opportunity to explain his reasons for dismissing counsel.

2. Cavin

Like Rivers, Cavin argues that the circuit court did not allow her to explain properly her reasons for discharging counsel, in violation of Maryland Rule 4-215(e). However, she avers that in her case, the circuit court erred by accepting Rivers's explanations, as well as statements by Appellants' counsels, and assuming that her reasons were the same. The State responds by arguing that Cavin endorsed Rivers's statements in several statements before the court on February 13 and 20, and that she had opportunities to explain her reasons for discharging counsel during those two pre-trial hearings. On February 23 she also stated her grounds independently.

In *Brown v. State*, this Court determined that the circuit court committed reversible error where the defendant's father, not the defendant, provided the reason why the defendant wished to discharge his attorney. 103 Md. App. 740, 747 (1995). This Court reasoned that failing to allow the *defendant* to explain his or her reasons violated Rule 4-215(e). *Id.* The Court of Appeals affirmed, and instructed: "[i]t is *Respondent's* reply . . . that ordinarily would be relevant to determine whether or not the discharge should be permitted, because the right to counsel and the right to self-representation are *personal* rights." *Brown*, supra, 342 Md. at 429-31 (citing *Faretta*, *supra*, 422 U.S. at 819) (emphasis added). Therefore, trial courts must give each defendant an opportunity to state

his or her reasons for discharging counsel.

In this case, Cavin did not independently explain her reason for discharging counsel during the initial hearing on February 13. However, the following exchange occurred during the February 20 pre-trial hearing:

> THE COURT: . . . And your name?
>
> MS. CAVIN: Good morning, Your Honor. Latrice Cavin.
>
> THE COURT: Okay, so we're here for a motion's hearing. I notice you that you do not have counsel with you. Are you going to be represented in this case?
>
> MR. RIVERS: No.
>
> THE COURT: Okay, so you wish to proceed without counsel on these motions, is that accurate?
>
> MR. RIVERS: I wouldn't say I wish, but it seems like I have no other choice. We have no other choice but to do so.

Following this exchange, Rivers proceeded to give the court the reasons for Appellants' dismissal of counsel—that, because of the hardship that the proceedings had on their personal lives and their children's lives, Appellants wanted to proceed to trial on their originally-scheduled date. Cavin repeatedly indicated her agreement with these statements. The court interjected:

> THE COURT: Okay . . . you're pointing out something I need to talk to you about, but I want to find out first of all whether Ms. Cavin -- you have the same point of view that you want to proceed and represent yourself --
>
> MS. CAVIN: Yes.
>
> THE COURT: -- both with respect to these motions and with respect to the

current trial date?

MS. CAVIN: Like we, [Rivers] just explained, we haven't, I don't really want to, but we have no choice.

THE COURT: Okay.

MS. CAVIN: So, yes, I am in agreement.

Then again on February 23, the court addressed Cavin's desire to dismiss counsel:

THE COURT: All right. So you still want to represent yourself in this matter?

MS. CAVIN: I don't want to but if I have to I have no choice. I would like to -- I would like to speak with and get some advice or counsel from somebody but, you know, if I can't get another public defender, then I have to go by myself and do it. It would be nice to get advice.

THE COURT: Well, I'm not sure exactly what you're saying to me. You had an attorney. You had a very good attorney. And she was provided through the public defender's office. And you wanted to fire that attorney.

MS. CAVIN: She just wasn't able to make [it] stay. And we wanted to proceed today.

* * *

THE COURT: All right. Well, Ms. Cavin I guess I'm a little less than clear about what you're telling me. It sounds like the public defender's office would still be willing to represent you, which is unusual, and [your former counsel] would be able to represent you. And obviously not represent you today. If the matter were to be postponed, she would be willing to represent you. Now, I don't know if you're asking me to postpone this matter?

MS. CAVIN: Well, Your Honor, I guess we can proceed. Proceed today.

THE COURT: Well, I know we can proceed today. But here's what I'm asking you. Are you asking for a postponement in order to get an attorney back in this case and then postpone the case? Are you asking me to do that?

MS. CAVIN: No.

THE COURT: All right. So you would like to go forward today without an attorney?

MS. CAVIN: Yes.

Although Rivers provided most of the explanations during the first and second pre-trial hearings, Cavin expressed her agreement with his statements. During the February 23 hearing, she provided her independent explanation upon questioning by the court. Cavin was examined on the point and pressed by the court to consider her decision. The court offered to postpone the trial, and she responded, "Well, Your Honor, I guess we can proceed. Proceed today." As we noted above, Rule 4-215's requirements can be satisfied by multiple circuit court judges over multiple hearings. *See Broadwater*, *supra*, 401 Md. at 200-02. We conclude that the circuit court properly provided Cavin with the opportunity to explain her reasons for dismissing counsel.

B. Rule 4-215(e)'s Evaluation of Whether Request to Dismiss Counsel is Meritorious

Cavin argues that because the circuit court did not make an explicit finding on the record about whether her stated reasons for dismissing counsel were meritorious, the court did not strictly comply with Rule 4-215(e)'s requirements. The State contends that Rule 4-215(e) does not require an express finding about the merits of a defendant's request.

Rule 4-215(e)'s language establishes that, once the defendant makes a request to discharge his or her attorney:

If the court finds that there is a meritorious reason for the defendant's request,

> the court shall permit the discharge of 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 . . . .

Md. Rule 4-215(e). Certainly, a circuit court must make a determination about whether a defendant's request to discharge counsel is meritorious. *See, e.g.*, *Gonzales v. State*, 408 Md. 515, 531 (2009); *Hawkins*, *supra*, 130 Md. App. at 687 ("The court should first ask the defendant why he wishes to discharge counsel, give careful consideration to the defendant's explanation, and then rule whether the explanation offered is meritorious"). However, Rule 4-215(e) does not, on its face, require a court to expressly rule on the record that a defendant's rationale for discharge is meritorious. This contrasts with Rule 4-215(b), which requires that circuit court "determin[e] and *announc[e] on the record*" its findings of whether a defendant knowingly and voluntarily waived his or her the right to counsel.[6] Md. Rule 4-215(b) (emphasis added). Although it may be the best practice for a court to employ the word "meritorious" in rendering a ruling on the record, it is not the determining factor. Although subsection (e) requires that the court determine whether the stated reason is meritorious, that finding can also be implicit. *See, e.g., Dykes*, *supra*, 444 Md. at 651-52 (explaining that Rule 4-215(e) "can be broken down into three steps . . .

[6] The language in Rule 4-215(e) also contrasts with the language of Rule 4-246(b), which requires the trial judge to "determine[] *and announce*[] *on the record* that the waiver of a jury trial is made knowingly and voluntarily." (Emphasis added). In *Nalls v. State*, the Court of Appeals explained that Rule 4-246(e)'s "announce on the record language" requires that the trial judge: "announce his or her finding explicitly on the record." 437 Md. 674, 685 (2014).

(1) The defendant explains the reason(s) for discharging counsel . . . (2) The court determines whether the reason(s) are meritorious . . . (3) The court advises the defendant and takes other action") (emphasis in original); *State v. Westray,* 444 Md. 672, 687 (2015) ("It is true that the court did not explicitly state that it found [the defendant] to be acting knowingly and voluntarily, but the court clearly was exploring those issues at the hearing and, just as clearly, concluded that [the defendant] was acting knowingly and voluntarily when it permitted the discharge of counsel."); *Broadwater v. State*, 171 Md. App. 297, 326-28 (2006) (rejecting the appellant's argument that the circuit court erred by failing to make an explicit finding that the reason given for appearing without counsel was meritorious), *aff'd*, 401 Md. 175 (2007); *Webb v. State*, 144 Md. App. 729, 747 (2002) ("The court, after listening to the explanation, implicitly found the reason was non-meritorious."). Thus, subsection (e) simply creates a fork in the road for the court depending on whether it finds the defendant's reason to be meritorious or unmeritorious. Then, as explained above, following a court's determination that a defendant does not have meritorious reason for discharging counsel, the court must "*advise*[] *the defendant and take*[] *other action*" consistent with Rule 4-215(a)(1-4). *Westray*, *supra*, 444 Md. at 675 (citation omitted). In *Dykes* the Court of Appeals clarified:

> If . . . the court finds that there is no meritorious reason for discharge of defense counsel, the court is to:
>
> • advise the defendant that the trial will proceed as originally scheduled
>
> • advise that the defendant will be unrepresented if the defendant discharges counsel and does not have new counsel

> • 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[.]

444 Md. at 653.

In this case, in the colloquy set out above from the February 23 hearing, explained that she was discharging her counsel because "[counsel] just wasn't able to make [it] stay[, a]nd we wanted to proceed today." Two additional exchanges between Cavin and the trial judge establish that the court properly complied with Rule 4-215(e)'s requirement to evaluate whether the request to dismiss counsel is meritorious and to advise of the consequences. During the initial pretrial hearing held on February 13, the court asked:

> THE COURT: Are you asking me to discharge [your attorney] so she will not be representing you in this matter?
>
> MS. CAVIN: Yes, sir.
>
> THE COURT: And you understand that if that happens, that the public defender's office will not appoint another attorney to represent you.
>
> MS. CAVIN: I understand.
>
> THE COURT: You're, you're either on your own or you're going to have to hire another attorney. You understand that?
>
> MS. CAVIN: Yes.

Following that exchange, Appellants both agreed that the trial would proceed as scheduled.

Again at the February 20 hearing the trial court advised Appellants regarding the trial schedule and the seriousness of their decision to proceed without legal counsel. The court explained:

> [L]awyers are specially trained to help people like you in these circumstances and, you know, you're going to be held to the standards of a lawyer. So, because you stand up and say, I'm not a lawyer but I want to present such and such evidence in may case, and if a judge decides that that's not proper evidence or you're not doing it the right way or anything like that, you're going to be stymied in your effort to present what you think is important evidence, which a lawyer, with that training, knowledge of procedures, etc., may have a different way of proceeding to provide that evidence to the people who are going to determine guilt or not guilt. So, you both are saying to me you're reluctant to proceed. You think you have no choice because the trial date is very significant to you for all the reasons that are going on in your life, but there are motions here to sever these counts which is going to mean separate trials for some of these events, meaning everything's not going to get decided in a trial on Monday or Tuesday.
>
> * * *
>
> But what I'm trying to tell you is . . . , albeit that you have a very vested interest in going forward with this, so much so that you're willing to take a chance on these type of convictions and these types of sentences which could have [] very significant bearing on your CINA case and you're ability to be with your children. . . . [W]ith the complexities of what's going on here, **it doesn't sound to me like you're making a very informed decision to give up attorneys**. . . . I'm making this inquiry of you to make sure that you're knowingly, voluntarily, and intelligently making this waiver of counsel which, on the face of these charges, is **actually not a very wise decision**. . . . I'm not trying to make the decision for you. I'm trying to give you information[.]

(Emphasis added). Later, during the February 23 pre-trial hearing, the court made the following statement:

> THE COURT: Well, [discharged counsel] doesn't represent you because you fired her. And I tried to talk you out of that but that is what you wanted to do and it was your right. And I respected your wishes. And I also told you the public defender's officer wasn't going to give you another attorney, you know, *unless I found that she was discharged for cause, which I didn't*. So today is the trial date.

(Emphasis added).

It is clear from the record that the court made the implicit finding that Appellants' reasons for discharging counsel were not meritorious. Over the course of multiple hearings, after numerous warnings about the dangers of discharging counsel, the court repeatedly advised the defendants that the trial would proceed as originally scheduled, and that they would be unrepresented if they discharged counsel. That the court did not use the word "meritorious" in making its determination is not dipositive. *Westray,* 444 Md. 672. The record establishes that the circuit court: (1) made a determination about whether Cavin's request to discharge counsel was meritorious, and (2) concluded that it was unmeritorious. Cavin was clearly aware that her trial would go forward as scheduled—as she requested. The circuit court thus complied with the requirements of Rule 4-215(e).

C. Rule 4-215(a)(1)—Receipt of Copy of Charging Document Containing Notice as to the Right to Counsel

Both Appellants argue that the circuit court failed to inquire whether they received a copy of their charging documents. Maryland Rule 4-215(a)(1) requires that the circuit court "[m]ake certain that the defendant has received a copy of the charging document containing notice as to the right to counsel." However, complying with subsection (a)(1) of Rule 4-215 is markedly different from complying with subsections (a)(2)-(4). *Randolph v. State*, 193 Md. App. 122, 135 (2010). Unlike these other subsections, which require that the court impart specific information to the defendant, subsection (a)(1) requires only that the trial judge have information indicating that the defendant received a copy of his or her charging document(s). *See Muhammad v. State*, 177 Md. App. 188, 248

(2007) (explaining "the fundamental difference, in terms of essential character, between subsection (a)(1), which concerns the happening of an event, and most of the other provisions of Rule 4–215, which involve the actual and direct imparting of specific information by the judge to the defendant"); *see also Broadwater*, 171 Md. App. at 320 (stating that: "[t]he recipient of the information pursuant to (a)(1) is the court itself"). Therefore,

> the satisfaction of subsection (a)(1) does not require a judge to make inquiry of, or say anything to, a defendant in a courtroom. If evidence objectively establishes that the defendant actually received a copy of the charging document . . . the fact that the judge failed to "make certain" of that fact is immaterial.

Muhammad, 177 Md. App. at 250 (citing *Fowlkes v. State*, 311 Md. 586, 609 (1988)).

In this case, we begin by observing that the Court had a copy and was aware of the contents of Rivers's case file, which is included in the record on appeal. The file shows that before his case was transferred to the Circuit Court, Rivers had a copy of the initial indictment, and on September 25, 2014, filed an omnibus motion in response to the indictment. Then on October 1, 2014, Rivers requested transcripts of the grand jury testimony, and his request was granted on October 14. Then on October 31, Rivers filed a motion to sever certain offenses citing to the seven counts enumerated in the grand jury indictment. Rivers also filed numerous discovery requests. Clearly, Rivers could not have filed the motions or discovery requests without having seen the indictment.

Rivers's conduct during the pre-trial hearings further establishes that he had received a copy of the indictment. During the February 20 hearing, Rivers told the circuit

court that both Appellants had received their files and reviewed them "over the weekend." During that hearing, Rivers asked the circuit court why both Appellants had the same indictment. He later stated: "[I]f I'm understanding correctly, we're being tried together on the indictment on the seven Counts." By these statements Rivers informed the court that both Appellants received copies of their indictments and had an opportunity to discuss and compare them before trial. Because the evidence objectively establishes that Appellants actually received copies of their charging documents, no further inquiry is required to conclude that the circuit court complied with the requirements of Maryland Rule 4-215(a)(1).

D. Rule 4-215(a)(3)'s Requirement to Advise of the Nature of the Charges and Allowable Penalties

Rivers contends that the court failed to comply with Maryland Rule 4-215(a)(3) because it did not advise Rivers of the maximum penalty for each of the crimes Rivers was charged with. Rule 4-215(a)(3) requires that the circuit court "[a]dvise the defendant 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).

In the instant case, the court reviewed the charges pending against Rivers at the February 13 hearing in the context of its strong warning against discharging counsel. (*See* Section A(1), *supra*).[7] During the February 20 pre-trial hearing, the court reviewed the charges against both Appellants again:

[7] In *Broadwater*, the Court of Appeals concluded that, even when a defendant is not

> THE COURT: All right. . . . You each have been charged with distribution of a controlled dangerous substance. The maximum penalties are 20 years in jail or a $25,000 dollar fine. The charge, that's two separate Counts, and you're both named in those Counts. Then you have a conspiracy to distribute a controlled dangerous substance. That's Count 3, that has the same penalty. Then you have sex offen - - Mr. Rivers, you have a sex offense in the fourth degree charge. That carries a year in jail and/or $1,000 dollar fine as a maximum penalty. Then, Mr. Rivers, you have a $1,000 dollar - - I mean, I'm sorry, theft of less than $1,000 dollars of an alleged Apple iPhone. That carries 18 months in jail and/or a $500 dollar fine as a maximum. Finally, Ms. Cavin, there are Counts 6 and 7. The first charge is first degree assault. That carries 25 years in jail. It's a violent crime. If you were convicted and if you were sentenced to anything beyond 18 months, you would have to serve half of that time before you'd even be eligible for parole. . . .

PT1; PT4.9-10. We conclude that the circuit court fully informed Rivers of the nature of the charges against him as required by Rule 4-215(a)(3).

E. Rule 4-215(a)(4)'s Knowing and Voluntary Waiver of Right to Counsel

Both Appellants allege that the circuit court failed to conduct a heightened inquiry into the voluntariness of their decision to discharge counsel when they offered information about their poor mental health and limited education. Compliance with Maryland Rule 4-215(a)(4) initially requires compliance with Rule 4-215(b), which provides in pertinent part:

> **(b) Express Waiver of Counsel.** 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*

fully informed of the nature of the charges against him during an initial hearing, that deficiency can be cured if the defendant is advised of those charges during a subsequent hearing. 401 Md. at 195-96 (citing *Gregg v. State*, 377 Md. 515, 550-52 (2003)).

knowingly and voluntarily waiving the right to counsel. . . .

(Emphasis added). *See State v. Campbell*, 385 Md. 616, 627 (2005) ("Because a defendant, by choosing to represent himself, is waiving the right to counsel, the court must conduct an inquiry to ensure that the defendant's waiver of counsel is knowing and intelligent"). The defendant must "be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Faretta*, *supra*, 422 U.S. at 835 (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942)). As noted *supra*, subsection 4-215(b) also requires that the court make an explicit finding on the record about whether the defendant discharged counsel knowingly and voluntarily.

Rivers relies on the Court of Appeals' opinion in *Kang v. State*, 393 Md. 97 (2006), to support his contention that his statement to the court about not taking his medication constituted a trigger requiring further inquiry into voluntariness.[8] The Court of Appeals in *Kang* examined the voluntariness of a defendant's waiver of his right to a jury trial where the defendant required the occasional use of translation services. *Id*. The trial court did not require that the entire waiver colloquy be translated from English to Korean. *Id*. at 110-19. The Court of Appeals instructed that "there is no uniform requirement explicitly to ask a defendant whether his or her waiver decision was induced or coerced, *unless there appears some factual trigger on the record, which brings into legitimate question*

[8] Cavin makes essentially the same argument, but does not provide any case law for support.

voluntariness." *Id*. at 110 (emphasis added). Noting that the defendant spoke some English and that he repeatedly indicated his satisfaction with the interpreter's service, the Court of Appeals concluded that the trial judge's colloquy did not trigger a requirement of further inquiry as to voluntariness because it "was adequate in informing Kang and ascertaining his awareness of his fundamental jury rights." *Id*. Because the Court of Appeals noted that the exchange between Kang and the trial judge was sufficient if it informed the defendant of his rights, the case does not command that ***any*** fact that raises the question of a defendant's ability to voluntarily waive his right triggers additional inquiry. Rather, the holding in *Kang* imparts that even where certain facts raise questions about a defendant's abilities, the inquiry will be sufficient if the court is able to determine that the defendant is informed of his rights and understands them.

In assessing whether the Appellants' mental health and level of education prevented a knowing and voluntary waiver of counsel, we find the Court of Appeals' opinions in *Gregg v. State* and *Martinez v. State* instructive. 377 Md. 515 (2003), 309 Md. 124 (1987). In *Gregg*, the expert testimony and the defendant's behavior raised questions about the defendant's competency for trial. 377 Md. at 520, 547. During the proceedings, the defendant indicated that there was a "slight drugging of his food in jail" that did not affect his ability to understand what he was doing and that he had a "walking restriction[.]" *Id*. at 550, 553. The Court of Appeals concluded that the circuit court complied with Rule 4-215 because it fully advised the defendant of his rights, the defendant

repeatedly declined representation, and, the defendant had made a knowing and voluntary waiver of counsel. *Id*. at 554.

A different result obtained in *Martinez v. State*, in which a defendant who spoke limited English was examined, with the aid of a court-ordered Spanish interpreter, to determine if the he wished to waive his right to a jury trial. 309 Md. at 127. When asked, "[h]as any person, either inside or outside of this courthouse, made you any promise, or has anyone threatened you in any way in order to have you give up your right to a jury trial," Martinez responded with a simple "yes." *Id.* at 135. The circuit court, however, moved on and failed to inquire further regarding the possibility that Martinez had been coerced into giving up his right. The Court of Appeals concluded that because the court failed to make further inquiry into the matter, the record could not support that Martinez had knowingly and voluntarily waived his right to a jury trial. *Id*. at 134-36. A new trial was required. *Id*.

The *Gregg* and *Martinez* decisions instruct that, where a defendant has poor mental health or a low level of education, his or her waiver of counsel will be deemed knowing and voluntary if the record can establish that the defendant fully understood his or her right to counsel and deliberately waived that right. *See McCloskey v. Dir., Patuxent Inst.*, 245 Md. 497, 504 (1967) (citations omitted) (explaining that that courts generally presume that defendants are sane and that "[w]here the mental capacity of a person to waive his right to counsel is at issue, [that] presumption must be rebutted by facts . . ."). *See also United States v. Williams*, 629 F. App'x 547, 551-52 (4th Cir. 2015) (concluding that a defendant

with a history of learning disabilities, who had failed to complete his GED, and who had threatened suicide had knowingly and voluntarily waived counsel because "the district court went out of its way to make [the defendant] aware of the 'dangers and disadvantages of self-representation,' including repeatedly advising [the defendant] that the court thought his interests would be better served by not attempting to represent himself").

Examining the record before us, we determine that it demonstrates that the court fully inquired into Rivers's capacity to understand what was at stake. At the initial hearing on February 13, following several lengthy exchanges between Rivers and the Court set out in section A(1) *supra*, the court made an explicit finding on the record that Rivers knowingly and voluntarily discharged waived his right to counsel:

> THE COURT: All right. So, just so I'm clear then, notwithstanding everything I've told you - -
>
> MR. RIVERS: Yes sir.
>
> THE COURT: you, you do want me to strike [counsel]'s appearance in this case.
>
> MR. RIVERS: Yes sir.
>
> THE COURT: All right. I'm going to discharge [counsel]. I'm going to make a finding that there has been a knowing and voluntary waiver of the right to counsel, and I understand that [counsel] will provide you with the discovery materials that he has gotten from the State.

At the February 20 pretrial hearing, when Rivers indicated that he was receiving mental health care, the court inquired:

> THE COURT: Do you fully understand what I'm saying here today, sir?

MR. RIVERS: Yes, sir.

* * *

THE COURT: All right. Sir, are you under the care of a mental health professional at this time?

MR. RIVERS: Yes.

THE COURT: Okay. Is that a psychologist, psychiatrist? Can you explain?

MR. RIVERS: Psychiatrist.

THE COURT: Psychiatrist? Okay. And do you receive medication through that psychiatrist?

MR. RIVERS: Yes, I do.

THE COURT: And do you take that at this current time?

MR. RIVERS: I haven't. I missed an appointment and I'm out.

* * *

THE COURT: Okay. For how long has that been true?

MR. RIVERS: It's a couple weeks.

THE COURT: What medication do you take?

MR. RIVERS: I take Adderall and Lithium.

THE COURT: Do you think the absence of those two medications is hindering your ability to [understand] what's going on here or make any decision?

MR. RIVERS: No, I do not.

Plainly, when the court became aware that Rivers was receiving mental health care but was not on his medication during the February 20 hearing, the court specifically examined Rivers as to whether the absence of medication prevented him from understanding the trial proceedings. Rivers expressly stated that it did not. Consequently, we conclude that the circuit court complied with the requirements of Rule 4-215(a)(4) and 4-215(b) with regards to Rivers. *See Gregg*, 377 Md. at 554.

In Cavin's case, the following exchange occurred during the February 20 pretrial hearing:

THE COURT: . . . Are you under the care of a mental health professional?

MS. CAVIN: Yes, I am.

THE COURT: Okay, and are you currently in care?

MS. CAVIN: Yes, sir.

THE COURT: And what type of professional is that?

MS. CAVIN: He's a psychiatrist.

THE COURT: Okay. . . . Do you, are you still active in that treatment?

MS. CAVIN: Yes, I am.

THE COURT: And do you receive medication?

MS. CAVIN: Yes.

THE COURT: Are you currently taking that medication?

MS. CAVIN: I'm out of one of them and the other one, yes.

THE COURT: Okay, what is the one you're out of?

MS. CAVIN: Adderall.

* * *

THE COURT: Do you think that your lack of Adderall or any other prescription medication is hindering your ability to understand these proceedings or to make decisions?

MS. CAVIN: It's, well, it's kind of confusing. I'm not like too familiar with the whole court thing, so it's kind of confusing a little bit.

THE COURT: Okay. You know, you each know you have a right to be represented by counsel at every stage of the court proceedings, correct?

MS. CAVIN: Yes.

MR. RIVERS: That's Correct.

THE COURT: Okay. And so far, you've voluntarily discharge your attorneys, is that correct?

[CAVIN]: Yes.

Following this exchange, the Court continued probing further into whether both parties were certain about their decision to discharge counsel, and reiterated its warning that

lawyers are specially trained to help people like you in these circumstances and, you know, you're going to be held to the standards of a lawyer. . .

* * *

THE COURT: And ma'am, do you understand that?

MS. CAVIN: Yes sir.

As illustrated above, and in the dialogue set out in section A (1) *supra*, the trial court did make further inquiries after Cavin informed the court that she was not taking Adderall and that she found the proceedings "confusing." The record shows that the court

conducted the required litany—by exploring whether Cavin understood her rights and the consequences of discharging her counsel, and then making several explicit findings on the record that Cavin knowingly and voluntarily waived her right to counsel. We conclude, therefore, that the circuit court complied with the requirements of Rule 4-215(a)(4) and 4-215(b) in establishing Cavin's knowing and voluntary waiver of counsel. *See Gregg*, 377 Md. at 554.

F. Rule 4-215(b)'s File Or Docket Notation

As noted above, compliance with Maryland Rule 4-215(a)(4) requires compliance with Rule 4-215(b). In addition to the requirement that the court examine whether the waiver is knowing and voluntary, Rule 4-215(b) also requires that the court: "ensure that compliance with this section is noted in the file or on the docket. . . ." Md. Rule 4-215(b). Here, the record shows that, even though the circuit court found that Cavin had knowingly and voluntarily waived her right to counsel during the February 13 pretrial hearing, another trial judge made additional inquiries about Cavin's wish to proceed without counsel during the February 20 and 23 pretrial hearings. Cavin argues that the second inquiry by the court evidences that her original consent and the court's original findings were not properly noted in the case docket and that the court thus did not comply with Rule 4-215(b)'s requirements. The State, while conceding that the court did not record the findings in the file or on the docket, argues that this is not a basis for reversal. The State contends that the clerical requirement to note compliance in the record is for the benefit of the court and does nothing to protect the rights of the defendant.

Our law firmly establishes that compliance with Rule 4-215 is strictly mandatory. *See Moten v. State*, 339 Md. 407, 411 (1995) (citing *Parren*, 309 Md. at 281-82). Courts have required such compliance because the rule "protect[s] that most important fundamental right to the effective assistance of counsel, which is basic to our adversary system of criminal justice." *Parren*, 309 Md. at 281. However, Rule 4-215 also aims to "secure simplicity in procedure, and to promote fairness in administration." *Id*. at 280. Generally, we do not demand strict compliance with the provisions not aimed at ensuring a valid waiver. *See Broadwater*, *supra*, 401 Md. at 182 ("Strict, not substantial, compliance *with the advisement and inquiry terms* of the Rule is required in order to support a valid waiver." (emphasis added) (citations omitted)). Rule 4-215(b)'s requirement that the court ensure "that compliance with this section is noted in the file or on the docket" is not aimed at advising defendants of their right to counsel or inquire as to the appropriateness of the right's waiver. *Cf. Knox v. State*, 404 Md. 76, 87 (2008) (explaining that, to satisfy Rule 4-215's protection of the fundamental right to counsel, the trial court "must be satisfied that the defendant is *informed of the risks of self-representation, and of the punishments which may be imposed*.") (emphasis added).

We agree with the State's contention that the failure to record the court's findings on February 13 in the file or on the docket constituted a clerical error, and that failure to comply did not provide a basis for reversal. Moreover, the record demonstrates that the court found, again, that Cavin made a knowing and voluntary waiver of counsel during the February 23 pretrial hearing. Cavin does not allege, and nothing in the record shows, that

this finding was not properly noted in the docket. As stated above, Rule 4-215's requirements can be satisfied in a "piecemeal, cumulative" fashion by multiple circuit court judges over multiple hearings. *See Broadwater*, 401 Md. at 200-02. Consequently, the proper notation of this finding cured any oversight that may have occurred during the first pretrial hearing held on February 13. We conclude that the circuit court properly complied with rule 4-215(b)'s requirement that the court ensure that compliance is noted in the file or docket.

In conclusion, having closely examined Appellants' arguments as to the circuit court's strict compliance with Maryland Rule 4-215, we hold that the circuit court complied with all requirements of Maryland Rule 4-215 and properly allowed Appellants to knowingly and voluntarily discharge counsel.

II.

Rivers's Motion to Sever

Rivers argues that the circuit court erred by not allowing him to withdraw a motion to sever filed by his former counsel which he opposed and had a right to withdraw. He further argues that, even if the circuit court correctly refused to allow him to withdraw the motion, the court erred in granting the motion because it determined that the evidence was "mutually admissible," and both of the required considerations—prejudice to the defendant and judicial economy—weighed in favor of trying all counts in one trial. The State responds by noting that Maryland Rule 4-253(c) allows a court to order separate trials on its own initiative and that, as a result, the court was allowed to sever the counts even

without a motion. The State further contends that Rivers failed to explain how the evidence from his drug charges trial was admissible in his assault charges trial. Finally, the State avers that Rivers was not prejudiced because he was allowed to present evidence about the assault to show motive for the drug charges and because prejudice is only a consideration for improper *joinder*, not severance.

Maryland Rule 4-253 governs a court's determination of whether cases will be tried jointly or separately. Maryland Rule 4-253(c) states:

> (c) **Prejudicial Joinder.** If it appears that any party will be *prejudiced by the joinder* for trial of counts, charging documents, or defendants, the court may, *on its own initiative* or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.

(Emphasis added). Severance is "absolutely mandated . . . when the evidence with respect to the separate charges (or, presumably, with respect to separate defendants) would not be mutually admissible. In a jury trial, on this issue no discretion remains." *Solomon v. State*, 101 Md. App. 331, 340 (1994) (citing *McKnight v. State*, 280 Md. 604 (1977)). However, when evidence is mutually admissible, "the decision whether to *grant or deny* a motion to sever is committed to the discretion of the judge," and this Court will not overturn that decision absent an abuse of discretion. *Osborn v. State*, 301 Md. 250, 255 (1984) (emphasis added). *See also Conyers v. State*, 345 Md. 525, 549 (1997) (explaining that mutual admissibility is a "precondition for similar offense joinder."); *Cortez v. State*, 220 Md. App. 688, 695 (2014) (quoting *Conyers*, 345 Md. at 556) (noting that, when evidence is mutually admissible, the decision of whether to join or sever trials "requires a balancing

of interests by the trial court, and we will only reverse if the trial judge's decision 'was a clear abuse of discretion.'"). The Court of Appeals defined abuse of discretion as decisions that are "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006) (quoting *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003)); *see also In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)) ("There is an abuse of discretion 'where no reasonable person would take the view adopted by the [trial] court.'").

In analyzing Rivers's contentions, we note that the circuit court did not explicitly find that the evidence from both trials was mutually admissible. Instead, the circuit court allowed Rivers to cross-examine the young women regarding his alleged assault during his drug charges trial. Thus, because Maryland law mandates severance when evidence would not be mutually admissible, Rivers views the circuit court's actions as an implied finding of mutual admissibility. *See Solomon*, 101 Md. App. at 340. Rivers does not allege that evidence regarding his assault charges was inadmissible during his drug charges trial. Consequently, we accept Rivers's premise that the evidence was mutually admissible without considering whether the trial court's decision to allow testimony about other charges to proceed constitutes a proper implied finding of mutual admissibility. Nonetheless, there is no requirement that the trial court join cases when the evidence is mutually admissible. *See Osborn*, 301 Md. at 255. As a result, this Court will only overturn the circuit court's decision to sever if it amounts to an abuse of discretion. *Id.*

Rivers asserts that the circuit court abused its discretion by granting his former counsel's motion to sever despite his clearly stated desire to withdraw that motion. Yet, we note that the court explained that the purpose of the motion was "to not have a jury considering seven allegations of criminal behavior[,] but rather to segregate those [allegations] into a logical way so that one jury would consider one set of conduct [and] [a]nother jury would consider another set of conduct." This is not a "manifestly unreasonable" reason for granting a motion to sever. *See Touzeau*, 394 Md. at 669. Therefore, the trial court did not abuse its discretion and we will not overturn its decision to grant Rivers's motion to sever.

JUDGMENTS AFFIRMED; COSTS ASSESSED TO APPELLANTS.