

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2320

September Term, 2015

STATE OF MARYLAND

v.

KIRBY PAYNE

Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: October 5, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2007, Kirby Payne pleaded guilty, in the Circuit Court for Baltimore City, to one count of armed robbery and one count of robbery. In 2014, Payne filed a petition for post-conviction relief, in which he requested a new trial. After that petition was granted, the State filed an application for leave to appeal, claiming that the court erred in so ruling. For the reasons that follow, we grant that application and vacate the judgment of the circuit court.

Following the entry of his plea, Payne filed a *pro se* petition for post-conviction relief. That petition included the contention that “the trial court committed reversible error by its failure to comply with the ‘announcement and determination’ requirement of” Maryland Rule 4-246(b), which provides that “[t]he court may not accept the waiver” of the right to a trial by jury “until, after an examination of the defendant on the record in open court . . . , *the court determines and announces on the record* that the waiver is made knowingly and voluntarily.” (Emphasis added.) Following a hearing, the post-conviction court observed that “the trial court failed to announce that [Payne] waived his right to a jury trial pursuant to” that Rule. It, therefore, granted the petition and awarded a new trial.

The State contends that that ruling was in error. We agree. In *Matthews v. State*, 46 Md. App. 172 (1980), we held that Maryland Rule 735 d, the predecessor to Rule 4-246(b), “has no application to the acceptance of a plea of guilty,” *id.* at 176, and Rule 4-246(b) does not substantively differ from Rule 735 d.¹ Also, at the time of Payne’s plea,

¹ Rule 735 d stated:

Rule 4-246(b) stated: “The court may not accept the waiver until it determines, after an examination of the defendant on the record in open court . . . that the waiver is made knowingly and voluntarily.” The requirement that a court announce its determination on the record was not added to the Rule until 2008. Thus, the trial court at Payne’s plea hearing did not err in failing to announce its determination on the record, and, hence, the post-conviction court erred in granting Payne’s petition and awarding a new trial. Accordingly, we grant the application for leave to appeal and vacate the judgment of the post-conviction court.

**APPLICATION FOR LEAVE TO APPEAL
GRANTED. JUDGMENT OF THE
CIRCUIT COURT FOR BALTIMORE
CITY VACATED. CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY RESPONDENT.**

If the defendant elects to be tried by the court, the trial of the case on its merits before the court may not proceed until the court determines, after inquiry of the defendant on the record, that the defendant has made his election for a court trial with full knowledge of his right to a jury trial and that he has knowingly and voluntarily waived the right.