

Circuit Court for Baltimore County
Case No. K-16-2478

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 681

September Term, 2016

BRIAN DOUGLAS HEIM, JR.

v.

STATE OF MARYLAND

Meredith,
Reed,
**Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: June 4, 2018

*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.

**Davis, Arrie W., J., did not participate in the adoption of this opinion. See, Md. Code, Courts and Judicial Proceedings Article, § 1-403(b).

After the Circuit Court for Baltimore County determined that Brian Douglas Heim, Jr., appellant, waived his right to counsel by inaction, Heim represented himself during a bench trial on charges stemming from a traffic stop and ensuing altercations with police. He was convicted of second-degree assault of a police officer, resisting arrest, failure to obey a lawful order, malicious destruction of property, driving under the influence of alcohol, reckless driving, and other traffic offenses. He was sentenced to a total of three years, with all but six months suspended in lieu of probation.

In this appeal, Heim contends that the circuit court erred or abused its discretion in ruling that he waived his right to counsel by inaction pursuant to Md. Rule 4-215(d) and in denying his request to postpone trial so that he could obtain representation. We conclude that the circuit court conducted an adequate “waiver by inaction” inquiry and neither abused its discretion in concluding that Heim did not have a meritorious reason for appearing for trial without counsel nor in denying Heim’s request for a postponement to obtain counsel.

FACTUAL AND PROCEDURAL BACKGROUND

Because this appeal challenges only the circuit court’s waiver by inaction ruling, our focus is on the proceedings pertinent to that decision.

On November 13, 2015, Heim was arrested and incarcerated after a traffic stop. On that date, Heim acknowledged that he had received, both orally and in writing during a review of his bail rights, the following warning not to delay in seeking free representation by the Office of the Public Defender (“OPD”):

You may hire any lawyer you choose. If you are unable to hire a private attorney, you may go to the Public Defender’s Office to apply for representation. . . . If you make bail or you are released on your own recognizance, you must go in person to the Public Defender’s Office immediately upon release or as soon thereafter as possible. . . . If you do nothing between now

and the date of your trial to obtain a lawyer, the Judge may find that you have waived your right to a lawyer. If you appear for your trial without a lawyer, the Judge could also find that you have waived your right to a lawyer. In either event, your case will be heard without a lawyer.

That same day, Heim appeared without an attorney at his initial appearance in district court. A judge advised him that, if he were to “appear[] for trial without counsel, the Court could determine that [he] waived counsel[,] and [he] may have to proceed to trial unrepresented by counsel.” In addition to this oral warning, Heim acknowledged receipt of a separate written notice that warned, using boldface capital letters, as follows:

DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.

Just below Heim’s signature, which indicated that he “read, or had read to [him], the contents of the above notice” and that he received a written copy of that notice, yet another warning appeared in larger font, as follows:

IF YOU DO NOT HAVE A LAWYER ON THE TRIAL DATE, YOU MAY HAVE TO GO TO TRIAL WITHOUT THE ASSISTANCE OF A LAWYER.

As a result of these four warnings, Heim was aware that, if he could not afford an attorney, he should immediately seek representation from the Office of the Public Defender (“OPD”), and that, if he appeared for trial without an attorney, he could be required to proceed to trial without counsel. Nevertheless, Heim did not go to the Office of the Public Defender (“OPD”) during the ensuing fifteen weeks before his district court trial date.

On February 29, 2016, Heim appeared without counsel for his district court trial. Although the record contained no entry of appearance on behalf of Heim, the prosecutor explained that

this is going to be [a] joint request for a postponement. The Defendant indicated to me that he is represented by Ed [MacVaugh]¹ and that Mr. [MacVaugh] is currently in federal court. This is also one of Trooper Frazee's cases and he is on vacation.

After confirming that Heim agreed to the postponement, the district court granted that request, then repeated the warning to secure counsel before the rescheduled trial date.

THE COURT: You have an absolute right to have a lawyer represent you. A lawyer can be important in explaining these charges, exploring any defenses you may have, making sure the State can prove its case. Even if you want to plead guilty or are found guilty a lawyer can be helpful in making sure you get an appropriate penalty. *If you want a lawyer and can't afford one you can apply to the Office of the Public Defender.*

I know you have – you said you have Mr. [MacVaugh], *just make sure you have a lawyer the next time you come in, because if you come in again without a lawyer a judge could find that you waived your right to a lawyer and you'd have to proceed without one. Okay?*

MR. HEIM: Yes, sir.

(Emphasis added.)

The judge then sent Heim “downstairs” to get a new trial date from the court clerk. After doing so, Heim acknowledged in writing that his rescheduled trial date was May 2, 2016.

¹ The attorney identified by the prosecutor apparently is Edwin Stanton MacVaugh, III, who maintains a private practice in Towson. See Md. State Bar Ass'n, *Md. Lawyers' Manual*, p. 233 (2017). We have corrected the phonetic spelling used by the court reporter.

During the ensuing nine weeks before Heim’s trial date, no attorney entered an appearance on Heim’s behalf. On May 2, Heim again appeared for trial in the district court without counsel. Because Heim prayed a jury trial, the case was transferred to circuit court.

The following day, May 3, 2016, still without counsel, Heim appeared for trial in the circuit court. Because this was more than five months after Heim was first warned that his appearing for trial without counsel could be treated as a waiver of his right to representation, the circuit court conducted a waiver by inaction inquiry, as follows:

[MR. HEIM]: I currently have no representation and I request a postponement respectfully –

THE COURT: Well –

[MR. HEIM]: – to get some funds together to you [sic] to afford one. I originally had a lawyer lined up, I had some funds that I thought were going to be available –

THE COURT: I see.

[MR. HEIM]: – and they didn’t become available, so I went to a Public Defender’s Office but it was within ten business days, and I do have a letter from the Public Defender’s Office if that helps.

THE COURT: Well, let’s see.

[MR. HEIM]: Okay. (Tendering document.)

THE COURT: Thanks. Thanks, Terry.

So you went on the 22nd of April?

[MR. HEIM]: Yes, sir.

THE COURT: Okay. Wasn’t this case postponed in District Court once before on February 29th, 2016?

[MR. HEIM]: It was, sir, it was also –

THE COURT: *And what was the reason for that?*

[MR. HEIM]: *It was because the officer was on vacation.*

THE COURT: Okay.

[MR. HEIM]: *And I'm not sure if this matters or not, you know, but I'm currently living in a – foreclosed house. I have two young children and I'm in a pretty bad spot financially.*

THE COURT: *And how long have you been in a bad spot financially?*

[MR. HEIM]: *Well over a year.*

THE COURT: *So why wouldn't you have gone to the Public Defender's Office right after the case was postponed in February?*

[MR. HEIM]: *Well, because I've heard something about the Public Defenders that didn't seem like they would be quite –*

THE COURT: *Who have you heard –*

[MR. HEIM]: *– favorable.*

THE COURT: *– those things –*

[MR. HEIM]: *Just through mutual friends and even lawyers that I went to see. I'm sure they're the wrong people to ask but I just, um, from past experiences I wanted to have a lawyer.*

THE COURT: *Well, but the Public Defenders are lawyers, actually, they're very good lawyers. I don't know who you're – who you're talking to but they've given you bad advice.*

What's the State's position?

[PROSECUTOR]: Your Honor, we are opposed and ready for trial today.

THE COURT: Okay. Sir, *the Court finds that you've waived your right to representation by your inaction.*

This case was postponed in February 2016, you had plenty of time, um, under the circumstances to go to the Public Defenders – the Public Defender’s Office. I’ll hand you your paper back. You didn’t go until April 22nd, so your request for postponement is denied.

(Emphasis added.)

Later that day, Heim waived his right to a jury trial and proceeded to a bench trial without an attorney. He was convicted and sentenced that day.

DISCUSSION

Heim contends that the circuit court erred in denying his request for a postponement to secure counsel. In support, he argues that, in conducting the waiver by inaction inquiry mandated by Md. Rule 4-215(d), the court “erred in failing to conduct a sufficient inquiry concerning the nature and timing of [his] attempts to obtain private representation”. Also they erred “in finding that the reasons for delay were not meritorious, despite the court’s recognition that [his] failure to timely apply to the Office of the Public Defender was a result of ‘bad advice.’” We disagree, for the reasons explained below.

Standards Governing Waiver by Inaction

A criminal defendant may waive his constitutional right to counsel by inaction. The Court of Appeals has summarized the legal standards governing such waiver as follows:

The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation . . . and to have the Assistance of Counsel for his defence.” U.S. Const. amend. VI. Through the Fourteenth Amendment, the duty to provide all criminal defendants with counsel applies to individual states because such provision is “fundamental and essential to a fair trial.” Similarly, Article 21 of the Maryland Declaration of Rights states “that[,] in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment,

or charge, in due time (if required) to prepare for his defence; [and] to be allowed counsel.” Md. Decl. of Rights, art. 21. These constitutional provisions “guarantee a right to counsel, including appointed counsel for an indigent, in a criminal case involving incarceration.”

As part of the implementation and protection of this fundamental right to counsel, we adopted Maryland Rule 4–215, which explicates . . . the modalities by which a trial judge may find that a criminal defendant waived implicitly his or her right to counsel, either by failure or refusal to obtain counsel, and the necessary litany of advisements that must be given to all criminal defendants before any finding of . . . implied waiver of the right to be represented by counsel may be valid. The Rule “provides an orderly procedure to insure that each criminal defendant appearing before the court be represented by counsel, or, if he is not, that he be advised of his Sixth Amendment constitutional right to the assistance of counsel, as well as his correlative constitutional right to self-representation.”

Broadwater v. State, 401 Md. 175, 179–81 (2007) (citations and footnotes omitted).

At issue in this case is subsection (d) of Rule 4-215, which provides, in pertinent part:

(d) Waiver by Inaction--Circuit Court. If a defendant appears in circuit court without counsel on the date set for hearing or trial, indicates a desire to have counsel, and the record shows compliance with section (a) of this Rule, . . . the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant’s appearance without counsel, the court shall continue the action to a later time and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant’s appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial.

“Because the right to counsel is a ‘basic, fundamental and substantive right,’” the Court of Appeals consistently has held that “[s]trict, not substantial, compliance with the advisement and

inquiry terms of the Rule is required in order to support a valid waiver” by inaction. *Broadwater*, 401 Md. at 182 (citation omitted).

We review a determination that a defendant waived his right to counsel by inaction for abuse of discretion. *See Moore v. State*, 331 Md. 179, 187 (1993). An abuse of discretion occurs when “the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.” *Gray v. State*, 358 Md. 366, 383 (2005).

In *Broadwater*, the defendant waived her right to representation by inaction after delaying more than five months before seeking representation by the OPD. 401 Md. at 205. In reviewing the circuit court’s waiver inquiry, the Court of Appeals recognized that

[t]here is no prescribed or set form of inquiry that must precede a trial judge’s finding of waiver under Rule 4–215(b)–(e). Before the Circuit Court judge may find waiver pursuant to 4–215(d), however, he or she must allow the defendant to explain his or her appearance without counsel and, through inquiry, determine whether the defendant’s reason is meritorious. As the Court of Special Appeals has observed,

[i]n determining whether the defendant’s reason is meritorious, the court’s inquiry (1) must be sufficient to permit it to exercise its discretion . . . (2) must not ignore information relevant to whether the defendant’s inaction constitutes waiver . . . and (3) must reflect that the court actually considered the defendant’s reasons for appearing without counsel before making a decision.

We have concluded that a trial court abused its discretion in finding a waiver of the right to counsel: by not inquiring into the merits of a defendant’s reason for appearing before the court without counsel; by not inquiring further when a defendant explained that he had just become employed and, therefore, did not qualify for the Public Defender’s Service, and where the trial court found waiver after a defendant

explained that his lawyer, who also was representing a co-defendant, suffered from a conflict of interest and was forced to withdraw his appearance. On the other hand, we have declined to find abuse of discretion in finding waiver where a defendant discharged counsel, without justification, shortly before trial, and requested the court to appoint new counsel.

Id. at 203-04 (citations omitted).

After examining that waiver record, the *Broadwater* Court held that the court's inquiry was adequate and that the defendant had no meritorious reason for waiting until the last minute to seek representation by the OPD:

[T]he Circuit Court complied with the requirements of Rule 4–215(d) in finding waiver by inaction. The trial court examined Broadwater's offered explanations as to why she had appeared numerous times in court without counsel, asked her about the problems she perceived with the State's particular discovery responses, and determined that, *in light of the fact that she had approximately five months in which to retain an attorney after being told the first time of the importance of counsel, she effectively waived her right to counsel by inaction. Our perusal of the record also leads us inevitably to the conclusion that Broadwater was in no way confused about this right or the peril of inaction*

Her contention on 14 February 2005 that she would have been able to secure representation from the Public Defender's Office had a two-week postponement been granted does not suggest remotely that Judge Tisdale abused his discretion in denying that relief and finding waiver. From the time of her first hearing in the Circuit Court, where she was informed of the importance of retaining counsel, and of her right to free representation by the Public Defender, if she qualified, Broadwater had four months to ascertain whether she so qualified or, failing that, to find private counsel. She vacillated in her reasons from her 21 September 2004 representation to Judge Ambrose in the District Court, where she claimed to have selected a private counsel to represent her, to the 8 October 2004 hearing where she failed to explain adequately why, having contacted the Public Defender, she neglected to follow up to determine whether she qualified for

assigned legal counsel. Instead, she iterated that she did not know if the Public Defender tried to reach her as she had not picked up her mail at her residence address for three months (or apparently made other arrangements to receive mail). She alluded to suffering from fibromyalgia, but never explained how that condition prevented her from securing counsel. Finally, she stated she did not seek to engage counsel earlier because she was afraid a Public Defender would “plead [her case] out.” Judge Tisdale again explained to her the importance of counsel and the potential for a future finding of waiver by inaction:

THE COURT: An attorney can assist you by evaluating the charges and the facts of the case and advising you how to proceed in connected court proceedings on your behalf. As I told you, if you come to court on the 8th of November without an attorney, you likely won’t be granted a continuance to retain one. Now, I know you’ve heard this same advice on a number of occasions, and a judge is going to look at this file and say, well, we’ve told her and told her, okay?

One month later, Broadwater again was advised of her rights and the risk of waiver by inaction if she appeared yet again without counsel:

THE COURT: Now, I’m going to tell you again what the judge already told you in October So I’m telling you that one more time so that when this case comes back here, the record is going to reflect you were advised of your right to a lawyer once again, and if you come back without a lawyer, the judge could find that you have waived your right to be represented by counsel, by a lawyer. Do you understand that, Ms. Broadwater?

BROADWATER: Yes, ma’am.

After reviewing these numerous admonitions on the record, Judge Tisdale ultimately determined that Broadwater, unjustifiably and without meritorious reason, refused or failed

to secure counsel after having ample opportunity to do so. On this record, we are unwilling to conclude that that ruling constituted an abuse of discretion.

Id. at 203–06 (emphasis added).

A defendant’s inability to afford private representation may or may not be a meritorious reason for appearing without counsel, depending on the circumstances. As the Court of Appeals has recognized,

[t]he fact that a defendant has not finished paying his or her lawyer, without more, may not be a meritorious reason for appearing without counsel. When, however, that defendant’s recent employment is added to the mix, it may be. An inquiry may reveal that the defendant delayed in seeking employment or some other reason for concluding otherwise. Similarly, although the proffer that a defendant sought the assistance of the public defender when it became obvious that he or she could not pay private counsel but was refused representation is consistent with a meritorious reason for appearing without counsel, inquiry into the circumstances might reveal that it is not.

Moore v. State, 331 Md. 179, 186-87 (1993).

Heim’s Challenges

Citing *Gray*, Heim argues that the circuit court abused its discretion by “failing to conduct a sufficient inquiry concerning the nature and timing of [his] attempts to obtain private representation” and by “finding that the reasons for delay were not meritorious, despite the court’s recognition that [his] failure to timely apply to the Office of the Public Defender was a result of ‘bad advice.’” The State counters that “the court conducted a sufficient inquiry” and that the record “supports the circuit court’s finding that Heim did not have a meritorious reason for appearing at trial without counsel[.]”

We begin by recognizing that Heim, like Ms. Broadwater, “was in no way confused,” neither about the right to obtain free representation through the Officer of the Public Defender (“OPD”) nor by “the peril of inaction” if he failed to secure such representation before trial. *Broadwater*, 401 Md. at 205. On November 13, 2015, Heim was clearly advised to immediately seek representation and warned that, if he appeared for trial without a lawyer, he could be required to go to trial without one. During his bail review and first appearance in district court, Heim received four separate warnings, both oral and written, including one that expressly directed him to immediately contact the OPD if he did not have money to pay for a private lawyer.

Heim had more than three months – from November 15, 2015 (when he was released on bond) through February 29, 2016 (his scheduled district court trial date) – to secure representation. On February 29, he appeared without counsel on the scheduled trial date, claiming to be represented by an attorney who had a scheduling conflict. Heim did not tell the court that the attorney he identified had not yet been retained, much less that he did not have the money to pay him. Although there was no entry of appearance or other correspondence from an attorney on Heim’s behalf, the district court postponed trial. Before doing so, the court gave Heim a fifth warning to “make sure” he had counsel by the rescheduled trial date because, if he appeared without counsel, he could be deemed to have waived his right to representation and required to go to trial that day without counsel. The court also reminded Heim that, if he “wanted a lawyer and can’t afford one, you can apply to the OPD.”

Heim left the courthouse with a new trial date of May 2, which gave him more than two additional months to secure representation. Despite what he admitted were longstanding financial difficulties and having been warned not to delay in going to the OPD in order to secure free

representation, Heim waited another seven weeks before visiting the OPD on April 22. Under longstanding OPD policy, this was too late to secure a public defender for the scheduled trial date.

After learning that he could not obtain a public defender, Heim did not obtain private counsel. Nor did he contact the court or defense counsel to request a postponement for the purpose of securing representation through the OPD. Instead, he waited another ten days and simply appeared without counsel on the scheduled district court trial date of May 2. The next day, after his case was transferred for a jury trial, Heim appeared in the circuit court, again without counsel. He asked for a postponement so that he could raise money for private counsel.

After questioning Heim about his reasons for appearing without counsel, the circuit court ruled that he waived his right to representation by inaction. For the reasons explained below, we conclude that the circuit court's inquiry was "sufficient to permit it to exercise its discretion," that the court did not "ignore information relevant to whether [Heim's] inaction constitute[d] waiver," and that "the court actually considered [his] reasons for appearing without counsel before making a decision." *Broadwater*, 401 Md. at 204. See *McCracken v. State*, 150 Md. App. 330, 357 (2003).

Adequacy of Waiver Inquiry

There is no prescribed or pattern form of inquiry that must precede a finding of waiver of counsel by inaction in a circuit court proceeding. See *Grant v. State*, 414 Md. 483, 490–91 (2010). Citing *Gray*, Heim contends that his waiver inquiry was inadequate because the circuit court did not elicit either "the timing of when Mr. Heim found out he would [not] be able to hire counsel" or "the nature of [his] . . . expectation of funds to hire counsel;" nor did the court "otherwise ascertain any information which would allow [it] . . . to evaluate the *bona fides* of Mr. Heim's 'facially plausible' explanation for delaying to apply for Public Defender representation." We disagree.

Heim told the court that he wanted a postponement in order to obtain more time to raise funds for a private attorney, not to secure representation by the OPD. The court elicited that Heim’s financial circumstances had been distressed for more than a year, a period of time encompassing the date of his arrest and release on November 15, 2015. Although Heim relied on an unidentified source of funds to pay for a private attorney, those funds had become unavailable to him.

In light of that information, the court then asked Heim why he did not go to the OPD after his February 29 trial date was postponed. Heim answered that he did not go earlier because what he “heard” about public defenders was not “favorable.” When the court asked who he had been listening to, Heim admitted that he based that decision on his own “past experiences” as well as comments by others whom he was “pretty sure” were “the wrong people to ask,” including “friends and even lawyers that [he] went to see.” Having elicited this information, the court had sufficient information to determine that Heim appeared for trial without counsel because he still did not have money to secure private representation and had refused to seek representation through the OPD.

Gray v. State, 338 Md. 106 (1995), illustrates how a defendant who failed to timely seek representation by a public defender might assert a meritorious reason for such delay. When Gray appeared for his arraignment on January 13, 1993, the court advised him of his right to counsel and directed him to go to the OPD that day. *Id.* at 108–09. Nearly three months later, on April 7, Gray did not have counsel when he appeared for his scheduled trial date. *Id.* at 109. He explained that, having never been “in trouble” before and being unaware of the OPD policy that clients must request representation at least ten business days before trial, he went to the OPD on March 25, which was one day too late. *Id.* The court then asked Gray why he waited over two months to seek representation from the OPD. *Id.* at 110. He replied that he “thought [he] could get money

together for an attorney,” but couldn’t, and “was negotiating with another attorney.” *Id.* Without further inquiry, the court found that Gray did not have a meritorious reason for appearing without counsel and required Gray to represent himself. *Id.*

The Court of Appeals reversed, explaining:

A finding of waiver of counsel by inaction presupposes that the trial court has determined that the defendant has neglected or refused to obtain counsel. No basis for such determination appears in the record in this case. When asked if he had an attorney, the defendant answered no. He then explained that, unaware that he had a deadline, he went to the Public Defender’s office, thirteen days before his trial date. He was refused representation because, under that office’s policy, he was a day late getting there. When the court inquired as to why he waited over two months before contacting the public defender, the petitioner responded that he thought that he could get the money together for an attorney, but that he eventually realized that he couldn’t. The petitioner’s explanation is plausible and it is not, as a matter of law, non meritorious.

Id. at 112–13 (emphasis added) (citation omitted).

The Court of Appeals reasoned that Gray’s efforts to secure representation, either by a private attorney or by a public defender, established that he neither neglected nor refused to obtain counsel, and that the circuit court should have elicited more information about the timing and nature of his efforts to retain private counsel. *Id.* at 112-13. The Court explained:

To be sure, the petitioner did not contact the Public Defender’s office immediately after the arraignment as the arraignment judge suggested he might do. That fact alone, viewed in light of the petitioner’s explanation, does not, as a matter of law, show that the petitioner neglected or refused to obtain counsel. We simply do not know from the record what attempts the petitioner made to obtain counsel before turning to the Public Defender’s office for representation. Under the circumstances, we cannot say that contacting the public defender almost two weeks before the trial date dispositively demonstrates neglect

or refusal to obtain counsel. This is especially the case when there is no advance notification that earlier contact is necessary in order for the defendant's request for representation to be processed. Moreover, we are not prepared to hold . . . that a defendant may not attempt to obtain counsel on his or her own prior to seeking the assistance of the public defender. If the State's position were adopted, a defendant who reasonably believes that he or she can acquire private counsel must nevertheless immediately contact the Public Defender's office for representation, as the failure to do so could result in a finding of waiver by inaction as a matter of law if it turns out that he or she is wrong.

Notwithstanding that the petitioner's explanation for appearing without counsel was facially meritorious, the trial court, without further inquiry, required the petitioner to proceed to trial unrepresented. . . . [T]he record does not reflect that the court "actually considered" the reasons offered; it appears that the court, in effect, "ignore[d] information relevant to whether the petitioner's inaction constitutes waiver." Because the trial court violated Rule 4-215, the petitioner is entitled to a new trial.

Id. at 113–14 (citations and footnote omitted). *Cf. Moore*, 331 Md. at 185–87 (reversing waiver by inaction ruling because circuit court failed to consider effect of recent changes in defendant's employment on his eligibility for OPD representation and his partial payment to private counsel).

Gray does not require a different conclusion. Heim's waiver record materially differs from the record in *Gray*. When the court asked Mr. Gray why, after his earlier trial date was postponed, he delayed more than two months before going to the OPD, Gray explained that he had been trying to raise funds for a private attorney and did not know about the OPD deadline, for which he was only a day late. *Gray*, 338 Md. at 110. In contrast, Heim did not claim ignorance of the OPD deadline. Nor did he respond that the reason he put off going to the OPD for seven weeks after his first trial date was postponed was because he continued to believe he had a source of funds to pay for private counsel. Nor did he mention of having any other potential source for a retainer.

Instead, he simply admitted that he did not want to be represented by a public defender, that he still did not have the money to pay for private counsel, and that he would need even more time to raise funds for that purpose. In these circumstances, the court did not abuse its discretion in concluding its waiver inquiry without requiring Heim to identify the exact date when he learned that the funds he previously hoped to obtain would not be available.

Our analysis in *Webb v. State*, 144 Md. App. 729, 747 (2002), is instructive because, like Heim, that defendant responded to a waiver inquiry by admitting “that he had not contacted the Public Defender’s office in a timely manner and [that] he did not have enough money to hire a private attorney to represent him[,]” without indicating “that he was unaware of the time requirements to contact the Public Defender’s office” or that he honestly believed that “he could obtain the money necessary to hire an attorney” before the scheduled trial date. *Id.* at 747. Although a failure to comply with the mandatory advisements under Rule 4-215(a) required reversal of Webb’s convictions, we found that the waiver inquiry was adequate because the defendant “offered no information that required follow up, such as a change in his financial situation or lack of knowledge,” and “[t]he court, after listening to the explanation, implicitly found the reason was non-meritorious.” *Id.*

Similarly, in this case, we are not persuaded that further inquiry was necessary to obtain more information relevant to the court’s waiver determination. Although Heim complains that the court failed to ask when he learned the funds for private counsel would not be available, he proffers no answer to this question, which concerns a matter solely within his personal knowledge. Moreover, when the court asked why he did not go to the OPD after his first trial date was postponed, Heim, unlike Gray, did not mention a last minute funding setback. Instead, he

volunteered that he did not go because he did not want a public defender, and the court followed up on that response.

In the absence of any proffer that Heim had additional information that could have added to the court’s understanding of why, despite repeated warnings about the consequences of appearing for trial without counsel, he waited until April 22, 2016, to go to the OPD, we are satisfied that the waiver inquiry was sufficient.

Lack of Meritorious Reason for Appearing Without Counsel

For similar reasons, we conclude that the court did not abuse its discretion in ruling that Heim’s continuing financial inability to retain a private attorney was not a meritorious reason for appearing without counsel on his postponed trial date. Defendants must be afforded a reasonable opportunity to secure private representation; however, they are not entitled to unlimited time to do so. Like Ms. Broadwater, Heim had ample warning that he should use the months before trial to either retain a private attorney or go to the OPD. In contrast to Mr. Gray, Heim had “past experiences” with the legal system and did not dispute that he was aware of the OPD’s ten-day deadline to secure representation by a public defender.² On this record, the trial court had a

² Mr. Gray was tried in 1993, presumably before the OPD’s ten-working-day deadline to apply for representation was publicly posted on a free website. The OPD website now contains the following information under its link on “How to Apply for a Lawyer:”

The Office of the Public Defender handles any criminal case carrying a possible jail sentence.

Eligibility for Public Defender services is determined by using six statutory factors

You must apply at least ten (10) working days prior to your trial date.

You may apply at most OPD Offices, not just the County where you will go to court.

sufficient factual basis to conclude that Heim, like Ms. Broadwater and Mr. Webb, knowingly assumed the risk that he would not raise the money he needed to secure private representation and, having refused or neglected to timely apply for assistance from the OPD, would be without counsel at trial.

We also reject Heim’s alternative complaint that the court should have found that the “bad advice” he received regarding public defenders constituted a meritorious reason for failing to secure representation through the OPD. When Heim proffered that he heard “something about the Public Defenders that didn’t seem like they would be quite . . . favorable[,]” the court interjected by asking for Heim’s source. He responded that it was “[j]ust through mutual friends and even lawyers that I went to see,” but admitted that he was “sure they’re the wrong people to ask” and that he “just, um, from past experiences . . . wanted to have a lawyer.” The court then pointed out that “the Public Defenders are . . . very good lawyers” and that the people he talked to had “given . . . bad advice.”

Reading the entire waiver colloquy in context, and with appropriate deference to the judge who could observe Heim’s demeanor throughout the inquiry, we cannot say the judge was required to rule that such “bad advice” constituted a meritorious reason for failing to timely seek representation through the OPD. Even if Heim actually received such “bad advice,” the court could reasonably conclude that he was not misled by it. Indeed, Heim ascribed his decision to

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forego representation by a public defender to his own “past experiences” and was admittedly aware that the friends and lawyers he talked to about the quality of such representation were “the wrong people to ask[.]”

On this record, we are unwilling to conclude that the court abused its discretion in ruling that Heim waived his right to counsel by inaction. *See Broadwater*, 401 Md. at 206.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**