

Circuit Court for Baltimore City  
Case No.: 817081018

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 912

September Term, 2017

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RAYVON BURLEY

v.

STATE OF MARYLAND

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Beachley,  
Fader,  
Thieme, Raymond G., Jr.,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Beachley, J.

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Filed: November 19, 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.

On June 9, 2017, a jury sitting in the Circuit Court for Baltimore City convicted appellant, Rayvon Burley, of possession of heroin and possession of cocaine. The court sentenced appellant to one year of incarceration for each count, to run concurrently. Appellant timely appealed and presents the following issue for our review, which we rephrase as follows:

Whether the circuit court committed reversible error when it failed to conduct the mandatory Rule 4-215(e) hearing when appellant requested to discharge his counsel.

We hold that the circuit court erred by failing to rule on appellant's request to discharge his counsel and, accordingly, we vacate the judgments and remand for a new trial.

### **BACKGROUND**

On January 17, 2017, police officers arrested appellant in Baltimore, Maryland, and the following day, charged him with attempted distribution of cocaine, attempted distribution of heroin, possession of cocaine, and possession of heroin.

Appellant's trial was scheduled to begin on June 7, 2017. That morning, appellant appeared in the Circuit Court for Baltimore City for a pretrial hearing where the following colloquy ensued:

[APPELLANT]: I want to know if I can get a postponement because I feel as though that my lawyer, he ain't doing the job. He didn't come see me. He [] told me he was going to come see me at the jail, but he never came to see me. I ain't see no evidence or nothing that I've seen. I don't even know what's going on with my case. We never even went over my case. I'm going to trial for something I don't even know what the motions is, what's going on or nothing. I don't know anything about nothing.

THE COURT: Well, I'll give [defense counsel] a chance to talk to you about that and I'm sure he'll have a chance to talk to you, but he feels like he's adequately prepared and he's requested a trial in the case and you're going to have the opportunity to have a trial today. [Defense counsel], explain everything that's going on.

[APPELLANT]: I understand that, but --

[DEFENSE COUNSEL]: Because, sir, you do wish to have a trial in this case, right?

[APPELLANT]: Yes, but I --

[DEFENSE COUNSEL]: And we have discussed this case.

[APPELLANT]: I just think that I need better representation because I don't think I'm getting it. I didn't see nothing. They said I had body -- they had body camera footage. I didn't even see it. He told me he was going to come show me. He never came to see me. He said he was going to show me evidence and what they have, I've never seen it. I've never seen nothing. I don't know nothing that is going on.

THE COURT: Well, Mr. Burley, I'll tell you that this Court is well aware of [defense counsel] and [defense counsel] is a fine attorney and if he says he's prepared to go to trial, then I'm sure that he's adequately reviewed everything and he can explain things to you over -- when you get into [the trial judge]'s courtroom, but --

[APPELLANT]: But if -- but shouldn't it be --

THE COURT: Go ahead.

[APPELLANT]: But shouldn't it be my decision if I want them to represent me? Shouldn't it be my decision?

THE COURT: If you want him to represent you?

[APPELLANT]: Yes, sir.

THE COURT: Well, so that's an interesting question. The rules would require me to determine whether you wish to not have [defense counsel] represent you and determine whether there's good cause for that request and

then I’m not sure that I would grant you a postponement further from this to get an attorney, so you may have to represent yourself, so.

Appellant proceeded to trial before a different judge later that morning, where he was represented by counsel. Following the trial, the jury found appellant not guilty on both of the attempted distribution counts, but found appellant guilty of possession of both cocaine and heroin. On June 9, 2017, appellant received a one-year concurrent sentence on each count. Appellant timely appealed.

### STANDARD OF REVIEW

We review the circuit court’s compliance with Rule 4-215(e) under a *de novo* standard of review. *State v. Graves*, 447 Md. 230, 240 (2016) (“Because our interpretation of the Maryland Declaration of Rights and Constitution, provisions of the Maryland Code, and the Maryland Rules are appropriately classified as questions of law, we review the issues *de novo* to determine if the trial court was legally correct in its rulings on these matters.” (quoting *Davis v. Slater*, 383 Md. 599, 604 (2004))).

### DISCUSSION

Maryland Rule 4-215(e) protects and administers the right to assistance of counsel and to counsel of one’s choice, both fundamental rights guaranteed by the United States Constitution and the Maryland Declaration of Rights. *Id.* at 241. Recognizing the fundamental nature of the rights secured by Rule 4-215(e), the Court of Appeals has consistently mandated strict compliance with its provisions. *Id.*

Maryland Rule 4-215(e) provides as follows:

**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.

As is clear from the text of the Rule, once a defendant has requested permission to discharge his attorney, the court must provide the defendant an opportunity to explain his reasons for the request. *Gonzales v. State*, 408 Md. 515, 531 (2009). “Next, the trial court must make a determination about whether the defendant’s desire to discharge counsel is meritorious.” *Id.* “Although the trial judge need not engage in a full-scale inquiry pursuant to Rule 4-215, the judge must at least consider the defendant’s reason for requesting dismissal before rendering a decision.” *Hawkins v. State*, 130 Md. App. 679, 686 (2000) (quoting *Williams v. State*, 321 Md. 266, 273 (1990)).

Appellant contends that his request for a postponement because of his dissatisfaction with his attorney’s representation was sufficient to trigger a Rule 4-215(e) hearing. He argues that this Court must reverse his convictions based on the circuit court’s failure to conduct a hearing consistent with the Rule’s mandates. The State concedes that the court was required to comply with Rule 4-215 after appellant expressed dissatisfaction with his trial counsel and agrees that reversal is mandated. Based upon our independent review of the record, we agree.

“[A] request to discharge counsel is ‘any statement from which a court could reasonably conclude that the defendant may be inclined to discharge counsel.’” *Gambrill v. State*, 437 Md. 292, 302 (2014) (quoting *Williams v. State*, 435 Md. 474, 486-87 (2013)). The request “need not be made in writing or even formally worded.” *State v. Davis*, 415 Md. 22, 31 (2010). However, the statement must indicate a defendant’s “present intent to seek a different legal advisor.” *Id.* at 33. As the Court of Appeals emphasized in *Williams*, “[o]nce Rule 4-215(e) is triggered, the trial court has an affirmative duty to address the defendant’s request.” 435 Md. at 487. Furthermore,

It would be illogical to hold that a court may allow a defendant’s expression of a present desire to discharge counsel (sufficient to trigger Rule 4-215(e)) to moulder into a past desire (not sufficient to trigger the Rule) by neglecting, overlooking, or otherwise failing to address promptly the defendant’s clear request.

*Id.* at 491.

Here, appellant clearly requested permission to discharge his counsel under Rule 4-215(e). Appellant expressed his dissatisfaction with his counsel’s efforts, stated that he “need[ed] better representation,” and asked the court whether it was his decision for counsel to represent him. Moreover, it is apparent that the pre-trial hearing judge recognized that appellant wished to discharge counsel. Specifically, the judge invoked language from Rule 4-215(e) and recognized that the Rule “*would* require” him to “determine whether there’s good cause for that request,” but said “I’m not sure that I *would* grant you a postponement . . . so you may have to represent yourself[.]” (Emphasis added). At no point did the judge make the requisite finding as to whether appellant had a meritorious reason for seeking to discharge counsel. Even if we were to assume that the

pre-trial hearing judge implicitly found no meritorious reason for appellant’s request, Rule 4-215(e) was still not satisfied. As the Court of Appeals noted in *State v. Weddington*, “[i]f discharge is denied, the judge must also advise the defendant of his option to proceed without counsel as well as the disadvantages of representing himself.” 457 Md. 589, 606 (2018). That was not done here.

We conclude that the court’s failure to rule on appellant’s request to discharge counsel constituted error as a matter of law, and therefore a new trial on the possession counts is required. *See id.* at 600-01 (“A trial court’s failure to comply with the requirements of Rule 4-215 constitutes reversible error.”); *Lopez v. State*, 420 Md. 18, 31 (2011) (“When applicable, [Rule 4-215’s] provisions are mandatory, must be strictly complied with, and are not subject to harmless error analysis.”).

**JUDGMENTS OF THE CIRCUIT COURT  
FOR BALTIMORE CITY VACATED.  
CASE REMANDED TO THAT COURT  
FOR A NEW TRIAL. COSTS TO BE PAID  
BY MAYOR AND CITY COUNCIL OF  
BALTIMORE.**