In the Circuit Court for Baltimore County
Case No. 3-K-05-4628

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 981

September Term, 2017

DERRICK LAMONT BROWN

v.

STATE OF MARYLAND

Graeff,
Friedman,
Thieme, Raymond G., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: December 14, 2018

In 2006, a jury in the Circuit Court for Baltimore County convicted Derrick Lamont Brown, appellant, of attempted first-degree murder. The court sentenced him to a term of life in prison. This Court affirmed the conviction in an unreported opinion, *Brown v. State*, No. 2629, Sept. Term, 2006 (filed January 9, 2009).

Appellant subsequently filed a petition for post-conviction relief. Following a hearing, the post-conviction court found that appellant was denied effective assistance of appellate counsel, and he was entitled to file a belated appeal. Appellant's sole question on appeal is whether the trial court failed to comply with the requirements of Maryland Rule 4-215, addressing waiver of counsel.

For the reasons set forth below, we answer that question in the affirmative, and therefore, we vacate appellant's conviction and remand for a new trial.

FACTUAL AND PROCEDURAL BACKGROUND

The facts relevant to this appeal are those that concern whether the trial court complied with the requirements of Rule 4-215, addressing waiver of counsel. We will limit our background discussion to these facts.

Appellant was arrested on November 7, 2005. He subsequently appeared before a District Court Commissioner, where he was given, and acknowledged receipt of, a Notice of Advice of Right to Counsel. On November 8, 2005, he appeared by video before a District Court judge for a bail review hearing.

On December 6, 2006, after several appearances in circuit court, and a week before trial was scheduled to begin, the court held a hearing on appellant's request to

dismiss his attorney. Appellant stated that his reason for wanting to discharge his public defender was because they had conflicting views regarding defense strategy and trial tactics. Appellant repeatedly asserted his intent to proceed without an attorney.[1]

The court found that appellant did not state a meritorious reason to discharge his attorney. It explained that appellant was entitled to waive his right to counsel and represent himself. Appellant reiterated that he wanted to represent himself.

After the court advised appellant of the benefits of legal representation, the following colloquy between the court and prosecutor occurred regarding Rule 4-215:

> [STATE]: Only one matter. I would ask that Your Honor put on the record either compliance with [4-215] A(1) through (4) or looking through the file to see if it has been complied with previously.
>
> THE COURT: **Well, he has been arraigned before, if that is what you are asking.** Actually, he has been – specifically, [prosecutor], what have I missed? The Court doesn't require a specific recitation of those elements. So what have I missed?
>
> [STATE]: I don't think you missed anything. I want to make it clear on the record if in fact this goes up on appeal one day, that (a)1 through (4) have previously been complied with I think at a bail review in which the Defendant signed acknowledgement of those rights.
>
> THE COURT: You are welcome to look at this, if you want, to see if he has done that. I thought that my advice of rights, although perhaps not verbatim from 215, fairly characterized your rights.
>
> [STATE]: I do agree. If I may have one brief look?
>
> THE COURT: Sure.

[1] The prosecutor stated that the case had "a long history," and this was "the fourth or fifth trial date." Appellant advised that he previously had discharged another attorney.

[STATE]: Your Honor, I'm satisfied.

(Emphasis added.)

The court then stated: "Based on all of the information before me, I'm going to grant your request to discharge [counsel] because you want to represent yourself." Appellant proceeded to trial, representing himself.

After his conviction, appellant filed an appeal with the assistance of counsel. His appellate attorney did not challenge the trial court's waiver of counsel finding.

As noted, the post-conviction court subsequently granted appellant the right to file a belated appeal on this issue. That appeal is before us now.

DISCUSSION

Appellant contends that the trial court erred in allowing him to proceed to trial as a self-represented litigant without a valid waiver of the right to counsel. He argues that the court failed to comply with the requirements of Rule 4-215. Specifically, he asserts that the court did not advise him of "the nature of the charges in the charging document, and the allowable penalties," pursuant to Rule 4-215(a)(3), or "[m]ake certain" that he had received a copy of the charging document pursuant to Rule 4-215(a)(1).

The State agrees that "a circuit court judge never advised [appellant] of the allowable penalties, as required by Rule 4-215(a)(3)." It then asserts: "If that is the case, [appellant's] convictions must be reversed, and his case remanded for a new trial."

The right to legal counsel in a criminal proceeding, which "seeks to protect a defendant from the complexities of the legal system and his or her lack of understanding

of the law," is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *Brye v. State*, 410 Md. 623, 634 (2009). A criminal defendant also has "the corresponding right to proceed without the assistance of counsel." *Id.*

Rule 4-215 "was drafted and implemented to protect both the right to the assistance of counsel and the right to self-representation." *Pinkney v. State*, 427 Md. 77, 92 (2012). "The Rule 'explicates the method by which the right to counsel may be waived by those defendants wishing to represent themselves . . . and the necessary litany of advisements that must be given to all criminal defendants before any finding of express or implied waiver of the right to be represented by counsel may be valid.'" *Id.* at 92–93 (quoting *Broadwater v. State*, 401 Md. 175, 180 (2007)). As the Court of Appeals cautioned in *Broadwater:*

> A court may not find an effective waiver pursuant to [Rule 4-215] (b)-(e) unless the record demonstrates compliance with subsection (a). *McCracken v. State*, 150 Md. App. 330, 348 (2003).
>
> Because the right to counsel is a "basic, fundamental and substantive right," the requirements of Maryland Rule 4-215 are "mandatory and must be complied with, irrespective of the gravity of the crime charged, the type of plea entered, or the lack of an affirmative showing of prejudice to the accused."

Broadwater, 401 Md. at 182 (quoting *Taylor v. State*, 20 Md. App. 404, 409, 411 (1974)). "[T]he mandates of Rule 4-215 require strict compliance." *Pinkney*, 427 Md. at 87.

Rule 4-215 provides, in pertinent part, as follows:

> (a) **First Appearance in Court Without Counsel.** At the defendant's first appearance in court without counsel, or when the defendant appears in the

> District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, 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.
>
> * * *
>
> (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.

Although the record reflects that the court and the prosecutor relied on advisements given in the District Court, appellant was charged with attempted first-degree murder, an offense within the exclusive original jurisdiction of the circuit court. *See* Maryland Code (2006 Repl. Vol.) § 4-302(a) of the Courts & Judicial Proceedings

Article ("Except as provided . . . the District Court does not have jurisdiction to try a criminal case charging the commission of a felony."); Maryland Code (2002 Repl. Vol.) § 2-205 of the Criminal Law Article ("A person who attempts to commit murder in the first degree is guilty of a felony[.]"). The Court of Appeals has held that, under these circumstances, where the circuit court possesses exclusive jurisdiction over the charges, the Rule 4-215(a) advisements must be given by a circuit court judge. *See Lopez v. State*, 420 Md. 18, 40 (2011) ("[T]his Court has taken the position that, with regard to advisements required for a valid waiver of the right to counsel in the Circuit Court, one 'may not rely on advisements given during a District Court bail review hearing where the charges involved ultimately were within the exclusive original jurisdiction of the Circuit Court[.]'" (quoting *Broadwater*, 401 Md. at 200)). *Accord Johnson v. State*, 355 Md. 420, 453 (1995).

Here, as the State concedes, the record does not reflect that a circuit court judge ever advised appellant of the allowable penalties, as required by Rule 4-215(a)(3). And because a "knowing and intelligent" waiver of counsel generally can occur only when there is strict compliance with Rule 4-215, the circuit court erred in finding a valid waiver of the right to counsel. Accordingly, appellant is entitled to a new trial.

CONVICTION FOR ATTEMPTED FIRST-DEGREE MURDER REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY FOR A NEW TRIAL. COSTS TO BE PAID BY BALTIMORE COUNTY.