Circuit Court for Baltimore City
Case No.: 123284010

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1093

September Term, 2024

MARCUS TILLMAN

v.

STATE OF MARYLAND

Nazarian,
Shaw,
Albright,

JJ.

PER CURIAM

Filed: April 28, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a jury trial in the Circuit Court for Baltimore City, Marcus Tillman, appellant, was convicted of possession of cocaine, possession of a regulated firearm after having been convicted of a disqualifying crime, and transporting a handgun in a vehicle. He raises three issues on appeal: (1) whether the court erred in failing to comply with the requirements of Maryland Rule 4-215(e) when he requested a postponement to secure private counsel; (2) whether the court abused its discretion in denying his request for a postponement; and (3) whether the court plainly erred when it imposed a mandatory minimum sentence for unlawful possession of a firearm because it mistakenly believed that it lacked the discretion to impose a non-mandatory sentence. The State concedes that the court erred in failing to comply with Maryland Rule 4-215. We agree and shall reverse the judgment of the circuit court. In light of our decision, we do not address appellant's remaining contentions, nor is it necessary to set forth all the evidence at trial that supported appellant's conviction.[1]

BACKGROUND

After a criminal indictment was filed against appellant in the circuit court on October 11, 2023, the Maryland Office of the Public Defender entered its appearance on appellant's behalf. Appellant appeared for trial with his assigned public defender on April 12, 2024. That morning, counsel indicated to the court that he was requesting a postponement because appellant's family had "partially" retained private counsel and

[1] Also pending before the Court is appellant's unopposed motion for summary reversal and to expedite issuance of the mandate. Given our resolution of the issues here, we shall deny the motion for summary reversal but grant the motion to expedite the issuance of the mandate.

"wanted more time to pay the rest." The trial court asked appellant if he wanted that attorney to represent him, and appellant responded that he did. Thereafter, the trial court twice asked appellant whether he had any complaints about his assigned public defender's representation. Appellant indicated that he was "confused about what to do," he wanted to "have [his] people[] on board about what's going [on]," he had "only met [his current attorney] one time[,]" and he "really [didn't] know anything about him."

The trial court next questioned assigned counsel about whether he was prepared to try the case that day. Defense counsel indicated that he was still seeking certain video evidence that he believed would "be helpful to [his] case" and that he would be better prepared if a continuance was granted. The prosecutor also advised the court that the State was not ready for trial because it had "called the officers off" based on its belief that new counsel would be entering the case. The trial court informed the parties that it did not "have the power to postpone the case" but that it did "find cause" to send it to an administrative judge for a "decision on postponement."

A mutual request for postponement was then made to the administrative judge based on the fact that: (1) defense counsel wanted to obtain additional discovery; (2) appellant's family preferred that appellant be represented by private counsel;[2] and (3) the prosecutor had already released the State's witnesses. After hearing this request, the administrative judge stated, "I'm just reading [the trial judge's] notes about what played out in her courtroom. Postponement denied, back to [the trial judge]." The entire proceeding lasted

[2] Appellant's assigned counsel did not inform the administrative judge that appellant had also expressed a desire to be represented by private counsel.

approximately one minute, and at no point did the administrative judge speak with appellant. The case then proceeded to trial without further discussion by the trial court or the parties regarding appellant's previous request to be represented by private counsel.

DISCUSSION

Rule 4-215(e), entitled "Waiver of Counsel," provides, in pertinent part: "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." "[O]nce 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." *State v. Taylor*, 431 Md. 615, 631 (2013). Motions to discharge counsel pursuant to Rule 4-215(e) proceed in a four-step process: "(1) there must be a request to discharge counsel, (2) the court must 'permit the defendant to explain the reasons for the request[,]' (3) the court must consider those reasons, and (4) the court must determine whether the reasons given are meritorious." *State v. Graves*, 447 Md. 230, 245 (2016) (alterations in original) (quoting Md. Rule 4-215(e)).

To trigger the trial court's duty pursuant to Rule 4-215, "a defendant must provide a statement 'from which the court could reasonably conclude' that the defendant desires to discharge his or her attorney, and proceed with new counsel or self-representation." *Taylor*, 431 Md. at 632 (quoting *State v. Hardy*, 415 Md. 612, 622 (2010)). However, "[a] request to discharge counsel 'need not be explicit,' nor must a defendant 'state his position or express his desire to discharge his attorney in a specified manner' to trigger the rigors of

[Rule 4-215]." *Gambrill v. State*, 437 Md. 292, 302 (2014) (citations omitted) (quoting *Williams v. State*, 435 Md. 474, 486 (2013)).

"We review *de novo* whether the circuit court complied with Rule 4-215." *Gutloff v. State*, 207 Md. App. 176, 180 (2012). "Rule 4-215 is a bright line rule, which sets forth precise procedures to be followed by the court." *Webb v. State*, 144 Md. App. 729, 740 (2002) (citations omitted). The Supreme Court of Maryland has repeatedly held that "[t]he failure of a trial court to conduct a thorough and proper Rule 4-215 inquiry mandates a reversal of the conviction." *Id.* at 741.

In this case, the requirements of Rule 4-215 were triggered when appellant informed the trial court that he wanted to be represented by private counsel who had been partially retained by his family. *See Gambrill*, 437 Md. at 304–05 (holding that the court was required to comply with Rule 4-215 where the counsel requested a postponement on the appellant's behalf because "[h]e indicates he would like to hire private counsel in this matter"); *Graves*, 447 Md. at 244 (holding the same where defense counsel stated that the appellant "has informed me that he would prefer to have [another attorney] represent him in this matter as opposed to myself"). As is required, the trial court then provided appellant with an opportunity to explain the reasons for that request, twice asking appellant if he had "any complaints" about his current counsel's representation.

We agree with the parties, however, that, having questioned appellant about his reasons for wanting to discharge his current counsel, the court did not then take the final step of determining whether those were meritorious. To be sure, Rule 4-215(e) does not, on its face, require the court to expressly state on the record whether a defendant's rationale

for discharge is meritorious. *See, e.g., 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); *Webb*, 144 Md. App. at 747 (2002) ("The court, after listening to the explanation, implicitly found the reason was non-meritorious."). Nevertheless, we are not persuaded that either the trial judge or the administrative judge made such a finding, even implicitly.

First, there is no indication that appellant's reasons for wanting to discharge counsel were found to be meritorious because, had such a finding been made, Rule 4-215(e) would have required the court to "permit the discharge of counsel" and "continue the action if necessary[.]" On the other hand, the record does not reveal that either judge determined that appellant's reasons for discharge lacked merit. As the parties correctly point out, had the trial court found no merit to appellant's request, it could have simply denied the motion for a postponement. Instead, the trial court stated that it did "find cause" to send the case to the administrative judge.[3] Moreover, it is not clear that the administrative judge made such a finding as she did not speak to appellant about his request to discharge counsel during the hearing or review the recorded proceedings before the trial court.[4] That neither

[3] Although there are other possible reasons that the trial court may have sent the case to the administrative judge to consider a postponement, specifically defense counsel's desire for additional discovery and the prosecutor's having already excused several witnesses, there is nothing that indicates that the court was rejecting appellant's reasons for wanting to discharge counsel and sending the case to the administrative judge for those reasons alone.

[4] The administrative judge indicated that she had reviewed the trial judge's notes about what occurred in her courtroom. Those notes, however, are not part of the record before this Court.

judge made such a determination is further supported by the fact that, after the postponement request was denied, they did not discuss with appellant whether he still wanted to discharge counsel in light of the denial, or advise him regarding the possible consequences of taking such action. *See Dykes v. State*, 444 Md. 642, 653 (2015) (reiterating that if the court finds no meritorious reason to discharge counsel it is to "advise the defendant that the trial will proceed as originally scheduled" and "advise that the defendant will be unrepresented if the defendant discharges counsel and does not have new counsel").

Because appellant indicated a desire to discharge counsel, the court was required to fully comply with Maryland Rule 4-215. And based on the record before us, we cannot say that either the trial judge or the administrative judge made a determination as to whether appellant's reasons for wanting to discharge his appointed counsel were meritorious, as is required by that Rule. Consequently, reversal is required.

MOTION FOR SUMMARY REVERSAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. MOTION TO EXPEDITE THE MANDATE GRANTED AND MANDATE TO ISSUE FORTHWITH. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.