Circuit Court for Dorchester County
Case Nos. C-09-CR-21-000064

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1133

September Term, 2021

CHARLES M. SHORTER

v.

STATE OF MARYLAND

Berger,
Reed,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 28, 2022

Following a jury trial in the Circuit Court for Dorchester County, at which he represented himself, Charles M. Shorter, appellant, was convicted of possession of cocaine, possession of drug paraphernalia, driving while impaired by alcohol, driving with a suspended license, driving with a revoked license, failure to display a license to a uniformed police officer on demand, and failure to display a registration card upon demand by police officer. Appellant raises two issues on appeal: (1) whether the court violated Maryland Rule 4-215 when it permitted him to discharge his appointed counsel prior to trial, and (2) whether the court illegally imposed an enhanced sentence because the State failed to comply with Maryland Rule 4-245. The State concedes that the court did not comply with Rule 4-215 and therefore, reversal is required. For the reasons that follow, we shall reverse the judgments of the circuit court.

At a scheduled motion hearing on July 30, 2021, appellant's counsel informed the court that appellant wanted to discharge the Office of the Public Defender and proceed *pro se*. After confirming that appellant wanted to represent himself, the court directed the prosecutor to "recite what the charges are and the penalties involved." The prosecutor then responded:

> Yes, Your honor. Mr. Shorter is charged with C.D.S. possession not marijuana, which carries six months incarceration; C.D.S. paraphernalia, which is a fine; failing to drive on a highway – I'm sorry – failing to display his license on demand, which is a fine; driving suspended, driving revoked, which both carry a year in jail; driving under the influence of alcohol, which is a year in jail; driving while impaired by alcohol, which is 60 days, however, he is – we have filed subsequent offender on both of those charges, so he's looking at two years under the driving under the influence and one year under driving while impaired; and driving without required license and authorization, which is a fine.

> Oh, this – I'm sorry. Simple possession. Did I say six months? I'm sorry. It's a year. Simple possession cocaine is a year. I – I thought – he's – I didn't realize I said six months in jail.

The court subsequently granted appellant's motion to discharge counsel and did not further advise appellant regarding the potential penalties for the charged offenses.[1]

Maryland Rule 4-215(e) outlines the procedures a court must follow when a defendant desires to discharge his counsel to proceed *pro se* or to substitute counsel. Specifically, the Rule provides:

> 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.

Md. Rule 4-215(e).

[1] A review of the record indicates that the only other time the possible penalties were discussed with appellant was at his initial appearance in District Court prior to his praying a jury trial. However, at that hearing, the Commissioner only advised appellant that the maximum penalty for CDS possession not marijuana was "one year and $5,000" and the maximum penalty for possession of paraphernalia was $500. The Commissioner did not address the possible penalties for any of the traffic related offenses.

Maryland Rule 4-215(a), which is embodied in Rule 4-215(e), "implements the constitutional mandates for waiver of counsel, detailing a specific procedure that must be followed by the trial court in order for there to be a knowing and intelligent waiver." *Richardson v. State*, 381 Md. 348, 367 (2004) (quotation marks and citations omitted). Under that Rule, before the defendant can discharge counsel, the court must ensure that the defendant has received a copy of the charging document; inform the defendant of his right to counsel and the importance of counsel; and advise the defendant of the nature of the charges and the allowable penalties. Md. Rule 4-215(a)(1)-(3).

The Court of Appeals has stated that "the Maryland Rules are precise rubrics" and that "the mandates of Rule 4-215 require strict compliance." *Pinkney v. State*, 427 Md. 77, 87 (2012). "Thus, a trial court's departure from the requirements of Rule 4-215 constitutes reversible error." *Id.* at 88. We review a trial court's interpretation and implementation of Rule 4-215 *de novo*. *Id.*

Appellant contends that the court failed to satisfy the requirements of Maryland Rule 4-215 before allowing him to discharge counsel and represent himself because it failed to advise him of the nature of the charges and the allowable penalties. The State agrees, as do we. As an initial matter, we note that the advisements made in the circuit court were insufficient because they were made by the prosecutor rather than the court. *See Webb v. State*, 144 Md. App. 729, 743 (2002). But regardless of who made the advisements, the record reveals that appellant was not informed of the allowable penalties as to all charged offenses. For example, appellant was not advised of the possible enhanced penalties for the offenses of driving on a revoked license, driving on a suspended license,

possession of cocaine, and possession of drug paraphernalia;[2] was not advised of the possible fines for driving on a suspended license, driving on a revoked license, and driving under the influence; and was not advised of any of the possible penalties for failure to display a registration card to a police officer. Because compliance with Rule 4-215 is mandatory appellant's convictions must be reversed.[3]

JUDGMENTS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY REVERSED. COSTS TO BE PAID BY DORCHESTER COUNTY.

[2] This is especially notable as the court found that appellant was a subsequent offender on the driving while revoked count and imposed a sentence of two years' imprisonment, despite the prosecutor having advised appellant that the maximum penalty for that offense was one year imprisonment.

[3] We do not address appellant's second contention, that the court illegally imposed an enhanced sentence, as our reversal of his convictions renders this issue moot.