Circuit Court for Baltimore City
Case Nos. 112152037-44

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1990

September Term, 2019

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DONALD GITTENS

v.

STATE OF MARYLAND

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Nazarian,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 4, 2021

Following a bench trial, at which he represented himself, Donald Gittens, appellant, was convicted in the Circuit Court of Baltimore City of sexual abuse of a minor, two counts of second-degree sex offense, possession of child pornography, and causing/soliciting a minor to engage in child pornography. After rendering its guilty verdict, the court found Mr. Gittens criminally responsible. It then sentenced him to an aggregate sentence of 45 years' imprisonment, with all but 25 years suspended, and 5 years of supervised probation. Mr. Gittens raises a single issue on appeal: whether the court violated Maryland Rule 4-215 when it permitted him to discharge his appointed counsel prior to trial. The State concedes that the court failed to comply with Rule 4-215 and therefore, that reversal is required. For the reasons that follow, we agree and shall reverse the judgments of the circuit court.

The only occasion that the court and Mr. Gittens discussed his desire to discharge counsel was on July 20, 2015, approximately one week before trial.[1] After Mr. Gittens's case was called, but before he entered the courtroom, the court informed defense counsel that the case was being postponed until the following week. Defense counsel then told the court, while Mr. Gittens was still absent from the courtroom, that Mr. Gittens wanted to fire her and that he was "a sovereign [citizen]."

After Mr. Gittens entered the courtroom, he told the court: "I don't want [counsel] to represent me. I'd rather represent myself. I'm firing her." The court asked Mr. Gittens if he was "knowingly and voluntarily" releasing his lawyer, to which he responded, "Yes."

[1] On July 8, 2015, defense counsel informed the court that Mr. Gittens wanted to fire her. However, Mr. Gittens was not present in the courtroom during this conversation.

The court then proceeded to ask Mr. Gittens a series of questions, including his age, education level, whether he was under the influence of drugs or alcohol, whether he had ever been under the care of a psychiatrist, whether he had any mental incapacities that kept him from understanding "what you're doing here today," and whether he understood that he would be representing himself at trial if he discharged his counsel. After Mr. Gittens answered those questions, the court stated, "All right. Very Well. Thank You." The proceedings then concluded. Mr. Gittens represented himself at his bench trial the following week.

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).

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) (citations and quotations omitted). Under that Rule, 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). In addition, subsection (a)(4) requires that the court conduct a "waiver inquiry" pursuant to Maryland Rule 4-215(b), which states, in relevant part, that the court "may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel." Md. Rule 4-215(b).

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.*

Mr. Gittens contends that the court failed to satisfy the requirements of Maryland Rule 4-215 before allowing him to discharge counsel and represent himself. Specifically, he contends that the court failed to inquire into his reasons for wanting to discharge counsel, make a finding as to whether those reasons were meritorious, inform him of the importance of counsel, advise him of the nature of the charges and the allowable penalties, and conduct a sufficient waiver inquiry. We need not address each of these contentions because, at a

minimum, we are persuaded that the court did not inform appellant of the importance of counsel and advise him of the nature of the charges and allowable penalties, as required by subsections (a)(2)-(3) of the Rule. The court did not address either of these issues with Mr. Gittens at the July 20, 2015 hearing. And although compliance with Rule 4-215 may be effectuated by the circuit court during different proceedings, there is nothing in the record indicating that occurred in this case. In fact, the only time that the possible penalties were discussed was during Mr. Gittens arraignment, almost three years before he decided to discharge counsel. But that advisement was insufficient because it was made by the prosecutor, not the trial court. *See Webb v. State*, 144 Md. App. 729, 743 (2002). Because compliance with Rule 4-215 is mandatory, Mr. Gittens's convictions must be reversed.

**JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY MAYOR AND CITY COUNSEL OF BALTIMORE.**