UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0821

September Term, 2015

GLENN ALLEN CARMEAN

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: March 7, 2016

Appellant, Glenn A. Carmean, was tried and convicted by a jury in the Circuit Court for Wicomico County (Jackson, J.) of unauthorized use of a motor vehicle and driving while impaired, but he was acquitted of driving under the influence. The Circuit Court sentenced appellant to five years of incarceration, with all but eighteen months suspended, for unauthorized use of a motor vehicle, six months incarceration, to be served consecutively, for driving while impaired, and three years of supervised probation. Appellant filed the instant appeal in which he raises the following question for our review, which we quote:

> Did the Circuit Court err in denying appellant's request to represent himself and to postpone his trial?

FACTS AND LEGAL PROCEEDINGS

Julia White attended the same high school in Salisbury, Maryland as appellant and rented a room to him. She testified that**,** on June 7, 2014, appellant asked her for a ride to the store after she came home from work. Appellant became upset when she told him that she could not drive him to the store because she had an appointment. According to White, appellant then took the keys to her car and went outside. White testified that she told him that she would call the police if he drove away in her Toyota Camry vehicle.

When appellant reentered White's home, she testified that she told him that she would give him a ride to the store later, whereupon appellant again picked up her car keys, at which time she reiterated her threat to call the police. White further testified that, when she heard the engine to her vehicle start, she picked up the phone and went outside to call the police as appellant backed out of the driveway.

White testified that appellant "drove around the block" and then returned her car. She testified that she remembered he was agitated and "smelled like he had been drinking." White acknowledged that appellant sometimes had permission to drive her car, but that she usually drove him to wherever he needed to go.

Responding to White's telephone call to the police, Trooper Joseph Meier ("Trooper Meier") of the Maryland State Police arrived at her home where he found appellant and White in the backyard. According to Trooper Meier, he saw a Toyota Camry in the driveway, which appeared to have been driven recently because its hood and tailpipe were warm. Trooper Meier testified that appellant's speech was slurred, that he had difficulty standing and was holding eight small, sealed bottles of Vodka. Additionally, Trooper Meier testified that appellant smelled like alcohol, that he cursed and refused to undergo field sobriety tests and claimed that the charges against him were "trumped up."

On June 8, 2014, appellant made his initial appearance before the District Court for Wicomico County where, on the same day, he also signed the "Initial Appearance Report." On July 28, 2014, the case was postponed, at appellant's request, in order for him to obtain counsel. On October 2, 2014, the case was postponed at the request of the State. On December 9, 2014, appellant requested a jury trial and the case was subsequently filed in the Circuit Court for Wicomico County. On February 18, 2015, the case was again postponed at the request of the State and the trial was ultimately rescheduled for April 28, 2015.

At trial, on April 28th, the following colloquy transpired:

THE COURT: Do you have a client, Mr. Jannace?

[APPELLANT'S COUNSEL]: Yes, I do. Your Honor, may we approach? (Whereupon, counsel and appellant approached the bench and the following occurred at the bench:)

[APPELLANT'S COUNSEL]: Your Honor, approximately ten minutes ago, Mr. Carmean advised me that he wants to represent himself and that he wants a postponement of the case, and I'm duly bound to advise the Court.

THE COURT: Well, can't I do this in front of the jury?

[APPELLANT'S COUNSEL]: I didn't think that was the way to go.

THE COURT: Well, let me ask you this. All right, Mr. Carmean, why do you want to fire Mr. Jannace?

[APPELLANT]: Because I don't feel that he did a good job in my case. We don't see eye to eye on my case. He keeps saying plead guilty; you know, I'm not guilty.

THE COURT: Now, first of all, I don't find that to be a meritorious reason for you to fire Mr. Jannace because Mr. Jannace is a very experienced criminal defense lawyer. You're not a lawyer I take it.

[APPELLANT]: I don't feel comfortable with him as a lawyer though. I don't think I'm going to be represented properly.

THE COURT: You have an absolute constitutional right to discharge your attorney and to represent yourself. However, if you do that I want you to know that this is your day in court, the case is not going to be postponed, you're going to defend yourself today, and then you're going to be up against an experienced prosecutor. Do you think you really want to take on that type of fight?

[APPELLANT]: No sir. But I haven't had time to even look at my discovery or anything. I don't even have charge papers.

THE COURT: This case has been around since December. Actually that was when it was in District Court and sent up here. This happened back — well, you know when

it happened, it happened in June almost a year ago. And you're telling me you're not ready to try the case or be a part of the case when it's tried?

[APPELLANT]: Well, like I said, I mean, I just need more time to work on the case by myself.

THE COURT: I don't find that to be a valid reason so to the extent that you're making a motion to postpone, your request is denied. Now, do you want Mr. Jannace to represent you? Today is your trial date.

[APPELLANT]: Yes, I might as well take it, I'll have Mr. Jannace represent me.

THE COURT: You will accept him as your attorney or continue [with] him as your attorney?

[APPELLANT]: I will.

THE COURT: Okay, very good

DISCUSSION

Appellant contends that the trial court committed reversible error when it denied his request to represent himself and his request to postpone his trial. Appellant asserts that the trial court committed this error when it "(1) did not conduct a sufficient inquiry into why he wanted to discharge counsel and (2) failed to meaningfully consider his reasons for wanting to discharge counsel." Appellant urges that the error committed by the trial court is analogous to that in *Moore v. State*, 331 Md. 179 (1993) and that reversal is mandated "without the need to establish harm."

The State responds that the trial court "gave [appellant] a full and fair opportunity to explain why he wanted to discharge counsel and adequately considered the sole reason

proffered before concluding that it lacked merit." The State also contends, in footnote 2 in its brief, that there is a discrepancy in appellant's brief between the caption of its argument and the actual argument and supporting substantive law. The State asserts that, "[t]o the extent that [appellant] intended to claim that the trial court abused its discretion in ruling on the merit of his reasons or his request for postponement, this Court should decline to address this claim because he did not adequately argue it or support it with facts or law."

In his reply brief, appellant counters that there is no disconnect between the caption and supporting argument, reasserting that the "Circuit Court violated the principles in *Moore* [*supra*]," when it failed to further inquire into why appellant wanted to discharge counsel. Appellant also reiterates that the trial court failed to sufficiently consider those reasons on the record. For the aforesaid reasons, appellant argues that his right to self-representation and to a trial postponement were erroneously denied. Appellant does not address, in his reply brief, however, the State's contention that appellant failed to preserve any argument concerning the trial court's abuse of discretion, *vel non*, in ruling on the merits of appellant's reason for wanting to discharge counsel and represent himself. Accordingly, this issue is not before this Court and we will not consider it.

I. SELF-REPRESENTATION AND DISCHARGE OF COUNSEL

Pursuant to federal law and the laws of the State of Maryland, a criminal defendant's constitutional right to representation has two sides, *i.e.*, the right to counsel and the right to self-representation.

> A criminal defendant's right to counsel is guaranteed by the Sixth Amendment, [of the U.S. Constitution] made applicable to the States through the Fourteenth Amendment and by Article 21 of the Maryland Declaration of Rights . . . . Running in tandem with this right to counsel is the equally important constitutional right to defend oneself: 'an accused in a criminal prosecution has two independent constitutional rights with regard to the management of his defense. He has both the right to have the assistance of counsel and the right to defend *pro se*.'

State v. Davis, 415 Md. 22, 29–30 (2010) (quoting *Snead v. State*, 286 Md. 122, 123 (1979)).

The right to self-representation, however, is not without formality and cannot coexist with the right to counsel. "It is the defendant's burden to assert the right to proceed *pro se*. 'When an accused desires to represent himself, he must assert that right, and its grant is conditioned upon a *valid waiver* of the right to assistance of counsel.'" *Pinkney v. State*, 200 Md. App. 563, 574–75 (2011) (quoting *Parren v. State*, 309 Md. 260, 266 (1987)) (Emphasis added).

In the case *sub judice*, appellant asserted the right to proceed *pro se,* but never actually waived his right to counsel, definitively retracting his request when he learned the trial would proceed as scheduled. Therefore, the trial judge never expressly denied appellant the right to proceed *pro se* because appellant never waived his right to counsel. Nevertheless, as stated in his appellate brief, appellant contends that the trial court denied him his constitutional right to self-representation by failing to make "sufficient inquiry" into the reason for his desire to discharge counsel and for failing to "meaningfully consider" the request. We consider these sub-issues, *infra*.

A. Appellant's Two Sub-Issues and the Role of Maryland Rule 4–215

Appellant asserts two sub-issues in support of his claim that the trial court erred in denying him his right to self-representation and to a postponement, *i.e.*, that the error occurred because the court "(1) did not conduct a sufficient inquiry into why he wanted to discharge counsel and (2) failed to meaningfully consider his reasons for wanting to discharge counsel."

The State responds that further inquiry was unnecessary because appellant explained his reason for wanting to discharge counsel in his statements. From the record, the State further explains, it is clear that appellant requested to discharge his counsel because he did not believe counsel was doing "a good job" and that he and his counsel did not see eye-to-eye with one another because counsel had advised him "to avail himself of the State's plea offer while [appellant] had insisted that he was not guilty." Moreover, the State maintains that the record reflects that the trial court listened to and actually considered appellant's response. The State asserts, that where appellate courts have held that insufficient consideration occurred during trial proceedings, "the record demonstrated that the trial court ignored or refused to consider the defendant's request . . . *before* he had an opportunity to fully explain his reasons." (Emphasis added). Ultimately, the State avers, the trial court adequately considered the "sole reason," *i.e.*, dissatisfaction with advice to take a plea agreement, that appellant proffered for wanting to discharge counsel and the court properly exercised discretion in concluding that the reason was unmeritorious.

1. Application of Maryland Rule 4–215(e)

Md. Rule 4–215(e) governs the discharge of counsel, providing specific procedural steps that a trial court must follow to comply with a defendant's constitutional rights.

> The Rule 'provides an orderly procedure to insure that each criminal defendant appearing before the court be represented by counsel, or, if he is not, that he be advised of his Sixth Amendment constitutional right to the assistance of counsel, as well as his correlative constitutional right to self-representation.

Gutloff v. State, 207 Md. App. 176, 191 (2012) (quoting *Broadwater v. State*, 401 Md. 175, 180–81 (2007)).

Md. Rule 4–215(e) provides the following mandatory procedure when a request is made by a defendant to discharge his attorney:

> (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)(l)–(4) of this Rule if the docket or file does not reflect prior compliance.

According to Rule 4–215(e), a defendant must first make a request to discharge counsel. Then, "a court must ask 'about the reasons underlying a defendant's request to discharge the services of his trial counsel and provide the defendant an opportunity to explain

those reasons'." *State v. Taylor*, 431 Md. 615, 631 (2013) (quoting *Pinkney*, 427 Md. at 93). The court then must make a determination as to whether the reasons for the request are meritorious. If the court determines that the reasons for the request are meritorious and permits the discharge of counsel, then the court "shall comply" with subsections (a)(1)–(4) of Rule 4–215.[1] If the court does not find the reasons meritorious, before the court can permit the discharge of defense counsel, it must first inform the defendant that the trial will proceed as originally scheduled with defendant unrepresented by counsel in the event that the defendant discharges his or her counsel and does not have new counsel before the court permits the discharge of defense counsel.

"When applicable, Rule 4-215(e) demands strict compliance. 'The provisions of the [R]ule are mandatory' and a trial court's departure from them constitutes reversible error." *State v. Hardy*, 415 Md. 612, 621 (2010) (quoting *Williams v. State*, 321 Md. 266, 272 (1990)).

Subsection (e) of Md. Rule 4–215 is applicable to the instant case and the record reflects that the Circuit Court complied with the Rule's procedural requirements. After first

[1] (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.

acknowledging appellant's request to represent himself and to discharge his appointed counsel,[2] the court asked appellant to articulate the reasons why he wished to discharge counsel and provided an opportunity for appellant to explain his reasons. Specifically, the trial judge asked why appellant wanted to "fire" his attorney and appellant's uninterrupted explanation was that he was dissatisfied with counsel for advising him to take a plea agreement. This, in addition to appellant's assertion, on the record, that counsel would not adequately represent him because they did not see "eye-to-eye," evinces the Circuit Court's compliance with the Rule to actually consider the request to discharge counsel.

After appellant explained the reasons for requesting the discharge of counsel, the court then determined that his reason was without merit, as reflected on the record, when the court informed appellant that it did not find his reason "to be a meritorious reason" for wanting to discharge his counsel.[3]

[2] Although analyzing the adequacy of appellant's request to discharge counsel is not a contested issue in the instant case, we note that it is the first procedural requirement under Rule 4–215(e) and accordingly hold that appellant's request was adequate. Rule 4–215(e) does not provide a definition as to what constitutes an adequate request, but our case law instructs that "any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel[,]" will suffice. *Williams v. State*, 435 Md. 474, 486–87 (2013). Statements made by appellant's counsel to the court that appellant desired to represent himself and appellant's response to the trial court inquiring why appellant wished to "fire" counsel constitute statements from which a court could reasonably conclude that appellant was inclined to discharge counsel.

[3] Whether the trial court's determination that appellant's reason was cognizable are reviewed under an abuse of discretion standard, but, as discussed earlier in the opinion, that was not an argument preserved for our review.

After ascertaining that appellant's reasons for discharging counsel were not meritorious, Rule 4–215(e) then requires the court to inform the defendant that the trial will proceed as scheduled, with appellant unrepresented by counsel, if a defendant decides to proceed with the discharge of counsel. Furthermore, if the court permits the discharge of counsel, subsections (a)(1)–(4) of Rule 4–215 are engaged if the "docket or file does not reflect prior compliance."

Md. Rule 4–213 governs the "Initial Appearance of Defendant" and states, in pertinent part:

> (a) **In District Court Following Arrest**. When a defendant appears before a judicial officer of the District Court pursuant to an arrest, the judicial officer shall proceed as follows:
>
> > (2) Advice of Charges. The judicial officer shall inform the defendant of each offense with which the defendant is charged and of the allowable penalties, including mandatory penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is then available. If one is not then available, the defendant shall be furnished with a copy as soon as possible.

In the instant appeal, after determining, on the record, that appellant's reason for requesting the discharge of his counsel and to proceed *pro se* was unmeritorious, the trial court complied with Rule 4–215(e) when it informed appellant that the trial would proceed as scheduled and he would have to "defend himself today." When his request to postpone was denied, appellant elected to retain his appointed counsel. Accordingly, the Circuit Court could not rule on whether to permit the discharge of counsel and subsections (a)(1)–(4) of

Md. Rule 4–215 are accordingly inapplicable. Moreover, we further note that subsections (a)(1)–(4) are inapplicable to the instant case because appellant appeared in court *with* counsel and this was not his first appearance as the case was "almost a year old," and was previously filed in the district court.

Furthermore, subsections (a)(1)–(4) are not engaged because the record illustrates prior compliance, as it pertains to the charging papers. Appellant signed the Initial Appearance Report on June 8, 2014 and Rule 4–213, as stated *supra*, requires that a judicial officer inform a defendant of all of the charges against him. Appellant does not contend, in his appellate brief or reply brief, that the district court violated the tenets of this Rule. Therefore, we can reasonably assume that appellant was either in receipt of his charging papers or informed of the charges against him in early June 2014 and, accordingly, subsections (a)(1)–(4) of Rule 4–215 are inapplicable.

2. When a Trial Court is Required to Make Further Inquiry

In addition to the procedural mandates outlined in Rule 4–215(e), a trial court *may* be required to make further inquiry regarding a defendant's request to discharge his counsel if there is ambiguity in appellant's request. "When an ambiguous statement by a defendant or his or her counsel is made under Rule 4–215(e), the fulcrum tips to the side of requiring a colloquy with the defendant." *Gambrill v. State*, 437 Md. 292, 306–07 (2014).

The Court of Appeals has identified varying forms of ambiguities that require a court to engage in further inquiry with a defendant.

> *See Johnson v. State*, 560 So. 2d 1239, 1240 (Fla. App. 1 Dist. 1990) (when a defendant indicates that he wishes to discharge court-appointed counsel, the trial court should inquire as to reasons. If *incompetency* of counsel is given as a reason, the *trial court should then make further inquiry*); . . . *People v. Crandell*, 46 Cal. 3d 833, 251 Cal. Rptr. 227, 760 P.2d 423, 431 (1988) (when a defendant seeks to discharge his appointed counsel and substitute another attorney, and asserts *inadequate representation,* the trial court *must permit* defendant to explain basis for his contention). *But cf. State v. Stinson*, Me., 424 A.2d 327, 330 (1981) (defendant's mere statement that counsel [was] not prepared [was] not sufficient to create *per se* rule that court make further inquiry).

Williams, 321 Md. at 273–74 (Emphasis added).

Appellant relies heavily upon *Moore*, *supra*, to support his argument that the trial court committed reversible error in failing to make further inquiry into the reasons why he desired to discharge counsel. *Moore* considered Rule 4–215(d),[4] which concerns waiver of counsel by inaction of the defendant in the Circuit Court, and the failure of the trial court to inquire further into the reasons for Moore's postponement request. Moore cited the reason for continuance as an inability to pay his attorney's fees. He was also unable to qualify for representation by the Office of the Public Defender. The Court of Appeals held, in pertinent part:

[4] **(d) Waiver by Inaction—Circuit Court.** If a defendant appears in circuit court without counsel . . . indicates a desire to have counsel, and the record shows compliance with section (a) of this Rule . . . the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason . . . the court shall continue the action to a later time . . . . If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial.

> We agree with the State that what the rule mandates is that the defendant be allowed an opportunity to explain the reason for appearance without counsel 'sufficient to allow the court to determine whether the reason is meritorious.' We believe, however, that the record must also be sufficient to reflect that the court actually considered those reasons . . . . While the rule does not require the conduct of an inquiry in any particular form, this does not mean that the court may ignore information relevant to whether the petitioner's inaction constitutes waiver; the court is not relieved of the obligation to make such inquiry as is required to permit it to exercise discretion required by the rule.

Moore, 331 Md. at 186, 187.

In the case *sub judice*, appellant appeared with appointed counsel and was affirmatively seeking to discharge him. There was no issue concerning waiver or inaction. Accordingly, Rule 4–215(d) does not apply. Moreover, appellant proffered, as a reason for wanting to discharge counsel, dissatisfaction with counsel's advice and a desire to proceed *pro se*, rather than an inability to pay attorney's fees or an inability to qualify for appointed counsel. No ambiguities of the kind present in *Moore* or in cases cited by the Court of Appeals, *supra*, *i.e.*, incompetency of counsel or inadequate representation, were present in the instant case. In response to appellant's request, the record provided the court with a sufficient basis to make a determination in compliance with Rule 4–215(e). Therefore, further inquiry beyond the Rule was not required.

B. "Additional Information"

Appellant also contends that the trial court failed to "meaningfully consider" his request to discharge counsel because it did not consider "additional information" during its deliberation upon his request. This "additional information," *i.e.*, that appellant had been

unable to review discovery materials and had not received his charging papers, appellant argues, was required to be considered by the court because, under Md. Rule 4–215(a)(1)–(4), the court had a duty to inquire as to whether he received a copy of his charging document.

The State responds that the "additional information" appellant cites is unrelated to his desire to discharge counsel. Rather, the State counters, this "additional information" was related to appellant's desire for a trial postponement so he could represent himself in court. Therefore, the State argues, the court was not required, under Rule 4–215(e), to conduct further inquiry into this "additional information" in its determination as to whether counsel should be discharged or ensure that appellant was in receipt of these materials.

Appellant, in his reply brief, differentiates his original argument, to counter the State's response, by reiterating that the trial court erred in not inquiring as to whether appellant received charging papers, *not* that it erred by failing to *ensure* that he received the charging papers.

In the instant case, as stated *supra*, appellant never discharged counsel nor proceeded *pro se*. Therefore, any procedural requirements to ensure that appellant received charging papers were not engaged. *See* MD. RULE 4–215(a)(1)–(4). Moreover, appellant's access to discovery and charging papers provided the basis for appellant's request to postpone the trial rather than his request to discharge counsel and represent himself**.** The basis for appellant's request to represent himself was not that he had not had an opportunity to review discovery or his charging papers. Rather, he sought a postponement of his trial to review these

documents so he could proceed *pro se*. The request to discharge counsel and the request to postpone the trial are two separate matters, that require separate analysis.

II. TRIAL POSTPONEMENT

According to appellant, the trial court erred in failing to postpone his trial. Specifically, he contends that, in light of his election to represent himself, he needed time to review discovery materials and obtain his charging papers, which he asserts that he never read or received**.**

The State responds that the court was under no obligation to grant a postponement because the judge found appellant's reasons for discharging counsel to be without merit.

Md. Rule 2–508 provides that, "[o]n motion of any party or on its own initiative, the court may continue a trial or other proceeding as justice may require."

"An appellate court reviews for abuse of discretion a trial court's ruling on a motion to postpone." *Howard v. State*, 440 Md. 427, 441 (2014). The Court of Appeals has acknowledged that the phrase, "as justice may require," remains unspecified, but reiterated "that the decision to grant a continuance lies within the sound discretion of the trial judge." *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). "Generally, an appellate court will not disturb a ruling on a motion to continue 'unless [discretion is] arbitrarily or prejudicially exercised.'" *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011) (quoting *Dart Drug Corp. v. Hechinger Co.,* 272 Md. 15, 28 (1974)).

> [The Court of Appeals] has consistently affirmed denials of motions to continue when litigants have failed to exercise due diligence in preparing for trial, in the absence of unforeseen circumstances to cause surprise that could not have been reasonably mitigated, where untimely requests were made, where procedural rules were ignored, where attorneys failed to adequately prepare for trial, where a witness was missing, and where a litigant's chosen counsel was absent but alternative counsel was available.

Neustadter, 418 Md. at 242-43. (Citations omitted).

> In contrast, [the Court of Appeals] has found reversible error in the denial of a motion to continue in certain circumstances:
>
> > . . . when the continuance was mandated by law . . . or when counsel was taken by surprise by an unforeseen event at trial, when he had acted diligently to prepare for trial . . . or, in the face of an unforeseen event, counsel had acted with diligence to mitigate the effects of the surprise . . .
>
> *Touzeau*, 394 Md. at 669–70.[citations omitted.] [This Court] has also reversed a denial of a motion to continue when a wife sought more time to obtain counsel in a contentious and complex divorce proceeding . . . and when a mother could not attend a custody hearing because the child whose welfare was in issue was ill . . . .

Id. at 243.

Moreover, **"**Maryland Rule 4–263[5] [Discovery in Circuit Court] does not require the State to reissue discovery materials to a self-represented defendant who has discharged counsel." *Howard*, 440 Md. at 444. Additionally, this Court has observed "that a trial court is under no obligation to grant a motion to postpone even when confronted with a discovery

[5] The new Md. Rule 4–263 was amended, effective January 1, 2016. The older version of the Rule, effective January 1, 2014, was applicable at the time of *Howard* and this case.

violation; *i.e.*, under that circumstance, the trial court may exercise its discretion to fashion any remedy that it deems appropriate." *Id.* (citing Md. Rule 4–263(n)[6]).

In the case *sub judice*, although neither appellant nor counsel filed a motion to postpone, the Circuit Court ruled, "[s]o to the extent that you're making a motion to postpone, your request is denied . . . ." We hold that the trial judge did not abuse his discretion in denying appellant's request to postpone the trial. First, the trial judge found that, appellant's reasons for requesting the discharge of counsel were without merit as stated, *supra*. Accordingly, under Rule 4–215(e), the trial judge must inform the defendant that the trial will proceed as scheduled, which the trial judge did in the case *sub judice***.** There is no stipulation under the Rule or elsewhere that a postponement be granted.

Second, as stated *supra*, appellant was requesting a trial postponement to review discovery materials and his charging document so he could proceed *pro se*, but he had not yet discharged his counsel and, in fact, he never did. Therefore, neither the State nor the court were required to comply with appellant's requests. *See e.g. Johnson v. State*, 237 Md. 283 (1965) (holding that, where a defendant was represented by counsel 30 days before the trial began, absent a showing of extraordinary circumstances necessitating a delay, postponement

[6] **(n) Sanctions.** If at any time during the proceedings the court finds that a party has failed to comply with this Rule . . . the court may order that party to permit the discovery of the matters not previously disclosed, . . . grant a reasonable continuance, . . . or enter any other order appropriate under the circumstances.

of trial was not require). The inference is that, after the discharge of counsel, barring any discovery violations, counsel will turn over the discovery to the client, once the client commences proceeding *pro se*.

Finally, even if there were discovery violations, which is not reflected in the record, postponement of the trial is not the automatic remedy. A trial judge has "discretion to fashion any remedy that it deems appropriate[,]" including *not* to postpone the trial. MD. RULE 4–263.

Moreover, the trial judge considered the procedural history of the case and noted that it had been pending since appellant's arrest, more than eleven months before the proceedings under review. During that time, the case had been postponed three times, twice in district court and once in the Circuit Court. One of the postponements was requested by appellant so he could obtain counsel. Appellant's stated reason for requesting this postponement was that he "just needed more time to work on the case by [himself]." Appellant, however, requested the jury trial more than four months before his request to discharge counsel and to postpone his trial. The record reflects that he represented himself for at least two months, from his arrest in early June 2014 until after his motion to postpone, in order to obtain counsel in late July 2014. As stated, *supra*, the fact that a defendant is unprepared is not a basis for reversing a trial court's denial of a motion to postpone a trial. For the first two months after charges were brought against appellant, he was in charge and made the decisions as to his defense. Thereafter, counsel was appointed and took charge of appellant's

defense for approximately the next nine months. Consequently, we hold that the trial court did not abuse its discretion in declining to postpone appellant's trial.

CONCLUSION

Notwithstanding appellant's recalcitrance, in the final analysis, faced with the choice of proceeding unrepresented or agreeing to have his attorney continue to represent him, appellant chose to continue counsel's representation. We conclude that the procedure employed in addressing appellant's reticence in having counsel represent him comported with the dictates of Md. Rule 4–215(e)**.** Accordingly, appellant's right to represent himself has not been violated and the trial court did not err in denying appellant's request to postpone the trial.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.