UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2555

September Term, 2014

ANTHONY ALBERT DILUTIS

v.

STATE OF MARYLAND

Woodward,
*Zarnoch,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: May 10, 2016

*Zarnoch, Robert A., J., participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

Anthony Albert Dilutis appeals from his convictions for distribution of heroin, possession of heroin with intent to distribute, and possession of heroin. Dilutis's four issues on appeal stem from his dissatisfaction with his attorneys and attempts to dismiss counsel. We hold that: (1) Dilutis's statements at a suppression hearing were insufficient to trigger Maryland Rule 4-215(e); (2) the trial court properly exercised its discretion in denying Dilutis's request for a supplemental suppression hearing; (3) the administrative judge properly exercised his discretion in determining that Dilutis did not have a meritorious reason for discharging counsel before trial; and (4) the trial court properly denied Dilutis's request to discharge counsel after the trial began.

FACTS

In January 2014, Dilutis was charged with distribution of heroin, possession of heroin with intent to distribute, and possession of heroin. Steven Scheinin, a panel attorney appointed by the Office of the Public Defender, entered his appearance on behalf of Dilutis. In August 2014, a suppression hearing took place in the Circuit Court for Baltimore County.

During the suppression hearing, Dilutis complained about his attorney, Scheinin, as will be discussed further below. Scheinin then argued that the police officer's search of Dilutis and subsequent seizure of heroin capsules and money from him was unlawful. The trial court found that the arresting officer "had more than sufficient information and cause to make the arrest" and denied the motion to suppress the heroin capsules and money. Not

satisfied with the suppression court's ruling, Dilutis engaged in a colloquy with the suppression court and questioned the basis for ruling.

After a lunch break, the parties returned to the courtroom when they realized that Scheinin had an apparent conflict of interest because he had previously represented Thomas Randall (a State's witness in Dilutis's case) in Randall's robbery case four years prior:

> THE COURT: First let's get through the initial issue here which I think your attorney mentioned in lockup, is that correct?
>
> [SCHEININ]: Yes.
>
> THE COURT: Okay. Mr. Scheinin, would you like to just – or [the State], you want to put on the record –
>
> [SCHEININ]: Your Honor –
>
> THE COURT: -- the specific nature of the conflicts and then we'll see what Mr. Dilutis would like to do.
>
> [SCHEININ]: Your Honor, in providing me the impeachable record of Mr. Randall who's a witness for the State, [the State's Attorney] indicated to me that he realized that I represented Mr. Randall in 2009 on a robbery charge. I've – actually I spoke with Mr. Randall this morning in preparing for today's trial. I did not recognize him.
>
> He did not recognize me. After the State['s Attorney] told me that, I went back to my office and brought up my notes on the trial, and then I came back and conferred with Mr. Randall; and in fact, I did represent him in a trial [on] April 19th, 2010.

> So the way I read the rule is both the – in order for me to continue to represent Mr. Dilutis, both parties must waive the conflict of interest. It's definitely a conflict of interest, and that's where we are right now.
>
> [The State]: And Judge, that was K-09-6619 was the case number in which Mr. Scheinin represented Mr. Randall just so the record is accurate.

The suppression court then advised Dilutis that the fact that Scheinin previously represented Randall "creates what is known as a conflict of interest" and asked Dilutis whether he wanted to "waive that conflict of interest by agreeing to proceed with Mr. Scheinin as your attorney" or have the Office of the Public Defender appoint another attorney to represent him. Dilutis did not waive the conflict of interest and asked that another attorney be appointed. The suppression court sent the parties to the administrative judge to request a postponement of the trial date. The administrative judge postponed trial to November 17, 2014.

Later that month, Spencer Gordon, another panel attorney, entered his appearance as counsel for Dilutis and moved to strike Scheinin's appearance.

On November 17, 2014, during a motions hearing in front of the administrative judge, Dilutis requested a postponement so that he could fire Gordon and retain private counsel. His request was denied. Later that day, the parties appeared for trial.

At trial, Gordon requested a new hearing on the motion to suppress. Gordon reasoned that because Scheinin had had a conflict of interest, the initial hearing on the

motion to suppress was tainted. In response to the trial court's inquiry as to whether there was "any prejudice to the defense," Dilutis himself proffered the following:

> [DILUTIS]: What this case boils down to to me is a hearsay case. There was nothing that the detectives observed from their direct observation of me and went into a vehicle at a driveway.
>
> Randall, [State's witness,] said that he had got drugs there. You don't know if he left them there or got them there, and when they pulled him up two miles away from the area, detectives told him if he writes a statement saying that I – that I told him to go to that vehicle, they let him go free. Now, this man is backing up 20 years on an armed robbery charge.
>
> * * *
>
> His credibility is no good …
>
> * * *

Gordon then picked up the argument:

> [GORDON]: [J]ust to cut to the chase, Your Honor, I would suggest that argument is that there were issues with regard to whether there was probable cause for the arrest and seizure of the evidence from Mr. Dilutis and that Mr. Scheinin [, prior defense counsel,] did not ferret out information that would have led to an appropriate argument that probable cause was lacking and that that evidence should have been suppressed.

The trial court denied the request to relitigate the motion to suppress, stating: "I am not hearing of any basis on which to have another hearing on the motion to suppress."

Following the denial of Dilutis's renewed motion to suppress, the trial began. After the jury was selected Dilutis again attempted to discharge counsel. The trial court denied

the request. The jury convicted Dilutis of distribution of heroin, possession of heroin with intent to distribute, and possession of heroin.

DISCUSSION

Dilutis complains that: (1) the suppression court erred in failing to comply with Maryland Rule 4-215(e) after he allegedly expressed dissatisfaction with his trial attorney; (2) the trial court erred in denying his request for a new suppression hearing; (3) the administrative judge abused his discretion in finding that there was no meritorious reason to discharge counsel before trial; and (4) the trial court abused its discretion in denying his request to discharge counsel after trial began. We reject these arguments and affirm the judgments of the trial court. We address each of these issues in turn.

I. Triggering Maryland Rule 4-215(e) Requires a Request

At the August 2014 suppression hearing, with Scheinin representing Dilutis, the following colloquy took place after the State described a plea offer:

> [THE STATE]: Your Honor, Mr. Dilutis is now present in the courtroom. Your Honor, for the record, the State has made a plea offer to Mr. Dilutis which would be Count 3, possession of heroin. Upon the finding of guilt in Count 3, the State would *nol pros* the balance of the counts. The State would make a recommendation of jail generally.
>
> Defense counsel would be free to argue for any sentence he deems as appropriate which would include time served. I believe that Mr. Dilutis has been in since December 17th of 2013, but I could be mistaken about that. Your Honor, the Defendant would agree to forfeit any of the items that were seized which were all – were actually contraband. If he wishes to accept that offer, it is

available at this time. If he wishes to [decline] that offer, then I believe it would be a motion with a potential jury trial.

* * *

[DILUTIS]: I don't agree with what's going on here. I thought that I would –

THE COURT: Just a minute. Have you spoken to your attorney?

[DILUTIS]: We don't really seem like we're on the same page.

THE COURT: Okay.

[SCHEININ]: Mr. Dilutis indicates he does not want to take the plea where the state is asking for jail time.

[DILUTIS]: If you could just hear me out, I'd appreciate it. I know my case better than [Scheinin] does because he don't spend too much time with me on this case. Okay. This is where I'm at, Your Honor, in this case. They're saying I have possession of six pills.

What is their probable cause for coming and getting them six pills? They say Mr. Randall wrote a statement saying that I sold some drugs. Well, the drugs that he had hadn't been analyzed, and they've had ten months to analyze it. This whole statement came from something I was supposed to sell Mr. Randall, but he don't have nothing. It's like a chain reaction thing. How can his statement hold any weight when he wasn't – he didn't have nothing – he didn't know he had it?

THE COURT: Simmer down. Sir, today what I need to know if you're not going to take the plea, do you wish to proceed to trial?

[DILUTIS]: Yes, I do.

THE COURT: Okay. And would that be a jury trial or –

[DILUTIS]: No. We'll have a trial today.

THE COURT: - or a trial by judge?

[DILUTIS]: We'll have a trial today.

THE COURT: You're ready?

[THE STATE]: Is that a jury trial or court trial?

[DILUTIS]: No. I thought we were scheduled for trial today.

[SCHEININ]: She's asking.

THE COURT: You are. Either way, you're going to get a trial today. So what I need to know because I need to tell the jury office is would you like the trial to be by a jury or by a judge?

[DILUTIS]: We'll go by judge trial. Can I ask another thing, Your Honor?

THE COURT: Certainly.

[DILUTIS]: Today was supposed to be a motion hearing to suppress evidence found on me.

THE COURT: Yes, correct.

[DILUTIS]: Can you explain to me where the probable cause for detective to throw –

THE COURT: No. We're not going to get into the motions right now because I have the rest of the docket to get through, so we're going to hear that, probably whatever judge is going to hear your trial.

Dilutis now claims that his colloquy with the judge at this suppression included a sufficient expression of dissatisfaction with his attorney for the court to reasonably have concluded that he was inclined to discharge counsel. As a result, Dilutis argues that his

remarks constituted a request to discharge counsel under Maryland Rule 4-215(e). We disagree and determine that no court could have reasonably concluded that Dilutis was requesting to discharge counsel. Because there was no request to discharge counsel, we conclude that Maryland Rule 4-215(e) was not triggered and that the suppression court had no obligation to act in accordance with Rule 4-215(e). We explain.

Rule 4-215(e) provides:

> [**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.

Md. Rule 4-215(e).

"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 the Rule [4-215(e)]." *Gambrill v. State*, 437 Md. 292, 302 (2014) (internal quotations and citations omitted).The triggering of Maryland Rule 4-215(e), however, only occurs when a "statement [is made] from which a court could conclude reasonably that the

defendant may be inclined to discharge counsel." *Williams v. State*, 435 Md. 474, 486–87 (citing *State v. Taylor*, 431 Md. 615, 634 (2013)). "Our review of a trial court's denial of a motion based on its departure from the requirements of Rule 4-215 […] is based on an abuse of discretion standard." *Taylor*, 431 Md. at 630 (internal quotation omitted).

Though there are no "magic words" that trigger the application of Rule 4-215(e), the defendant must make a request to discharge counsel. Circumstances that have been held to trigger Rule 4–215(e) include:

- Announcing in court "[I am] thinking about changing the attorney or something." *State v. Hardy*, 415 Md. 612, 622 (2010);
- Telling then-counsel, and having counsel repeat in court that he (the defendant) "didn't like" the attorney's evaluation of his case and that he "[w]anted a jury trial and new counsel." *State v. Davis*, 415 Md. 22, 27, 32 (2010);
- Declaring to the court "I don't like this man as my representative" and "[Y]ou all wouldn't let me fire him." *State v. Campbell*, 385 Md. 616, 632 (2005);
- Stating to the court "I want another representative." *Williams*, 321 Md. at 267; and
- Requesting new representation via letter to the court: "I'm writing to request [n]ew representation." *Williams v. State,* 435 Md. 474, 479, 489 (2013) (holding that defendant's letter "clearly, solely, and unequivocally" stated that he intended to discharge his counsel, thus implicating Rule 4-215(e).").

Additionally, even when a defendant instructs his attorney that he wants new counsel, and the attorney is uncertain whether the instruction is actionable, Rule 4-215(e) requires the court to ascertain whether the defendant is truly dissatisfied with present

counsel or merely wants to create delay. *Davis*, 415 Md. at 27, 35 (holding that when a court is conflicted about the intent of a defendant, a Rule 4-215(e) inquiry will dispel ambiguity).

Here, however, Dilutis did not make even a colorable request to discharge counsel. Unlike in the cases noted above, Dilutis merely expressed general dissatisfaction with the hearing proceedings at that time. At no point did Dilutis make a statement from which a court could reasonably conclude that he was interested in discharging counsel. Because Dilutis's statements were not a request to discharge counsel, either overtly or implicitly, Rule 4-215(e) was not triggered.

II. Denial of Dilutis's Request for a Supplemental Suppression Hearing

Dilutis's second issue on appeal is based on his assertion that the trial court erred in denying his request for a supplemental suppression hearing. This argument is grounded in Dilutis's belief that Scheinin had a conflict of interest at the initial suppression hearing and that that conflict tainted his performance, entitling Dilutis to a supplemental hearing. We view the analysis here as potentially involving three steps: *first*, we review *de novo* whether Scheinin had a conflict of interest; *second*, we review, on an abuse of discretion standard whether that conflict had an adverse effect or prejudiced the proceedings; and finally, if so, *third*, we review whether the trial judge abused her discretion in denying the request for a supplemental suppression hearing.

At the suppression hearing, Dilutis was represented by Scheinin. After the trial court denied the motion to suppress, Scheinin learned and immediately informed the court that

he had represented a State's witness, Randall, on a robbery charge approximately four years earlier:

> [SCHEININ]: Your Honor, in providing me the impeachable record of Mr. Randall who's a witness for the state, [the State's Attorney] indicated to me that he realized that I represented Mr. Randall in 2009 on a robbery charge. I've – actually I spoke with Mr. Randall this morning in preparing for today's trial. I did not recognize him. He did not recognize me. After the State['s Attorney] told me that, I went back to my office and brought up my notes on the trial, and then I came back and conferred with Mr. Randall; and in fact I did represent him in a trial [on] April 19th, 2010.

Scheinin stated that "[i]t's definitely a conflict of interest[,]" and withdrew from the case. *Id.* At trial in November 2014, replacement counsel, Gordon, requested a supplemental suppression hearing. The trial court denied that request, stating "I am not hearing of any basis on which to have another hearing on the motion to suppress."

Rule 1.7 of the Maryland Lawyers' Rules of Professional Conduct states the applicable ethical rule: "[A] lawyer shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if … there is a significant risk that the representation of one …client[] will be materially limited by the lawyer's responsibilities to … a former client." Rule 1.7(a)(2). Under certain circumstances, not applicable here, such conflicts may be waived. Rule 1.7(b).

First, we are not certain that there was ever a real conflict of interest. In the morning at the suppression hearing, neither Scheinin nor Randall was aware of Scheinin's prior

representation of Randall (a point that Dilutis does not dispute). Thus at that time, there was no "significant risk" that Scheinin's prior representation would "materially limit" Scheinin's representation of Dilutis. In the afternoon, immediately upon discovering his prior representation of Randall, Scheinin withdrew from representing Dilutis, precisely as is contemplated by Comment [4] to Rule 1.7, which provides that "[i]f a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation." Rule 1.7, Comment [4]. Thus, we think that it is unlikely that an actual conflict of interest arose. Because, however, the trial court did not base its decision on this ground, we pass to the second stage of the analysis.

Second, the trial court rejected Dilutis's claim for a supplemental suppression hearing because it found that even if Scheinin had a conflict of interest in the morning (which, as we have said, was a dubious proposition at best), it did not cause prejudice to Dilutis. For a conflict of interest to be cognizable, it must be concrete not abstract. "The Supreme Court explained in *Mickens v. Taylor* that for Sixth Amendment purposes, 'an actual conflict of interest, mean[s] precisely a conflict that affect[s] counsel's performance—as opposed to a mere theoretical division of loyalties.'" *Duvall v. State*, 399 Md. 210, 227 (2007) (citing *Mickens v. Taylor*, 535 U.S. 162, 171-72 n.5 (2002) (internal emphasis omitted)). Here, the trial court found no prejudice: "I am not hearing of any basis on which to have another hearing on the motion to suppress." Dilutis's claim of prejudice—that Scheinin declined to call Randall at the initial suppression hearing because of the prior representation—doesn't hold up to scrutiny because, at the time, Scheinin didn't remember

representing Randall. Nor did Randall remember being represented by Scheinin rather, we think it is clear that Scheinin's decision not to call Randall was solely a matter of strategy. Therefore, we hold that there was no abuse of discretion in the trial court's determination that there was no prejudice to Dilutis caused by Scheinin's potential conflict of interest.

Third, the decision whether to grant a supplemental suppression hearing is left to the sound discretion of the trial court, Md. Rule 4-252(h)(2)(C), and we review only for the abuse of that discretion. Here, as there was only a theoretical conflict of interest, which caused no prejudice to Dilutis, we hold that the trial court did not abuse its discretion in declining to hold a supplemental suppression hearing.

III. Denying the Request to Discharge Counsel on the Morning of Trial

Dilutis next argues that the administrative judge erred by denying his request to discharge counsel before trial. Dilutis alleges that it was an abuse of discretion for the administrative judge to determine that he lacked a meritorious reason for discharging counsel.[1] The State contends that the administrative judge properly exercised his discretion

[1] Dilutis, additionally argues that the administrative judge's finding should have been more explicit. We disagree. Rule 4-215(e) does not require an explicit finding. When a Rule requires an explicit finding, it is reflected in the plain language of the Rule. *Compare* Md. Rule 4-246(b) (requiring that waiver of a jury trial may not be accepted unless "the court determines and announces on the record that the waiver is made knowingly and voluntarily.") *with* Md. Rule 4-215(e). We conclude that the plain language of Rule 4-215(e) does not require a finding on the record and, therefore, that the manner in which the administrative judge denied Dilutis's request was perfectly appropriate.

to decline the request because Dilutis had requested "hybrid" representation, which is not permitted in Maryland.

Just prior to trial, Dilutis and Gordon appeared before the administrative judge. Dilutis's counsel noted that "Mr. Dilutis has decided that he sort of want[s] to take a certain approach in this case, much of which involves taking over the reins and cross-examining witnesses and that sort of thing." Dilutis also indicated that he wanted Gordon to be his "standby attorney." The administrative judge rejected that request, noting that "he can either be your attorney or he will not be your attorney." When Dilutis was presented with three options for proceeding, either with Gordon as defense counsel, hiring private counsel, or proceeding with self-representation, Dilutis first sought a postponement to secure private counsel. The administrative judge denied Dilutis's request for postponement, after which Dilutis decided that Gordon would remain as his counsel rather than proceed with self-representation.

It is "within the judge's discretion to determine whether the reasons given [for discharging counsel] are meritorious, and a request can swiftly be denied if the judge finds the reasons to be without merit." *Brown v. State*, 103 Md. App. 740, 746 (1995). We evaluate the administrative judge's denial of Dilutis's request to discharge counsel for an abuse of discretion. *Id.*

Only two types of representation are constitutionally guaranteed: representation by counsel and self-representation – "and they are mutually exclusive." *Grandison v. State*, 341 Md. 175, 199 (1995). Hybrid representation, in which a defendant acts as co-counsel

with his lawyer, violates Maryland law. *Galloway v. State*, 371 Md. 379, 397 (2002) ("In respect to the exercise of the right to counsel we have, generally, disapproved of hybrid representation.").

It is clear that Dilutis was requesting hybrid representation in which Dilutis and his lawyer would jointly represent him. As such, we conclude that the administrative judge did not abuse his discretion in finding that Dilutis's reasons for discharging counsel lacked merit because he was asking for a form of representation not permitted by Maryland law.

IV. Denying the Request to Discharge Counsel After Trial Began

Dilutis's final argument is that the trial court erred in denying his request to discharge counsel after trial began. Specifically, Dilutis claims that he was deprived of the opportunity to explain the reasons for the request. The State contends that the trial court gave Dilutis an opportunity to offer his reasons for discharging counsel, and that, upon consideration of those reasons, the court acted within its discretion to deny the request.

After selecting the jury, the State put a plea offer on the record – that Dilutis would plead guilty to Count One, distribution of heroin and the State would enter a *nolle prosequi* on the remaining counts and in another related case. When told that he needed to make a decision regarding the plea offer, Dilutis requested a postponement to "hire [a private] attorney":

> [GORDON]: And I did notify Mr. Dilutis of that fact that there is a distinction with regard to the 10 [years] versus the 25 [years]. So, Mr. Dilutis, it's up to you. I really – I have given you my advice and what I think you

should do many times, but it's your call. You [have] got to make the decision.

[DILUTIS]: This is my life here. I need a minute. I'm ready to drop out from chest pain and go to the hospital and make a postponement, yeah, and get a lawyer. This is crazy. I don't know what to do here. I don't know what to do here. I can't believe –

THE COURT: Here's what we have. I don't get an agreement –

[DILUTIS]: Your Honor –

THE COURT: Mr. Dilutis, you're not required to agree. Now, we've had the jurors sitting there from 1:45 –

[DILUTIS]: I understand that, Your Honor. I understand that, Your Honor.

THE COURT: I understand you have an important decision to make, but this – we're well into the day of trial, and you don't have a decision made.

[DILUTIS]: I don't want to cut you off. Let me ask you a brief question.

THE COURT: What's that?

[DILUTIS]: State's been postponing this case for a year. I need a postponement today to hire an attorney, and I can't get one?

THE COURT: Someone else will have to grant it. I'm not in charge of postponement today.

[GORDON]: That was already requested today and done.

[DILUTIS]: Yeah. Nothing against Mr. Gordon, but if I got a different lawyer, but it's either if I

get rid of Mr. Gordon, I got to do it myself. Where is the justice in that? How could I do this trial myself?

THE COURT: Well, you've had quite a long time to decide that.

[DILUTIS]: No. that was on the State –

THE COURT: This case has been pending a long time. All right. I'm not hearing agreement. Let's have the jurors brought out. We'll get started.

The Sixth Amendment protects a defendant's right to counsel both before and during trial. U.S. Const. amend VI. Before trial, Maryland Rule 4-215(e) provides procedural guidelines for the court to ensure this Constitutional right is protected. *State v. Brown*, 342 Md. 404, 412 (1996). After meaningful trial proceedings begin, however, in order "to prevent undue interference with the administration of justice," Rule 4-215(e) no longer applies, and the trial court must use its discretion to protect that same Constitutional right. *Brown*, 342 Md. at 412, 428. The Court in *Brown* provided a six factor inquiry to "assess whether the defendant's reason for dismissal of counsel justifies any resulting disruption[:]"

> (1) the merit of the reason for discharge; (2) the quality of counsel's representation prior to the request; (3) the disruptive effect, if any, that discharge would have on the proceedings; (4) the timing of the request; (5) the complexity and stage of the proceedings; and (6) any prior requests by the defendant to discharge counsel.

Brown, 342 Md. at 428. Only after considering these factors will the trial court have satisfied constitutional standards to protect the defendant's right to counsel. *See generally*

Brown, 342 Md. at 412-14 (detailing the constitutional implications to the defendant's right to counsel, the defendant's right to dismiss counsel, and the defendant's right to self-representation). We review the trial court's decision to deny "motions to dismiss counsel during trial, … [for] an abuse of discretion." *Brown*, 342 Md. at 429.

The discussion between Dilutis and the trial court was sufficient to have met the court's constitutional obligation because, as described below, all of the *Brown* factors were considered:

(1) The merit of the reason for discharge.

The first *Brown* factor requires analysis of the merits of the reason for discharge. Here, defense counsel informed the court, and Dilutis explicitly recognized, that a request had been denied earlier that same day. If he had different reasons for wanting to discharge counsel than he had articulated a few hours earlier, when his request before the administrative judge was denied, he did not profer them. The trial court did not cut Dilutis off. *Cf. Hawkins v. State*, 130 Md. App. 679, 687-88 (2000) (when defendant was in the process of explaining why he wanted to discharge his court-appointed attorney, the judge interjected, "We are not getting into that issue sir. I am just asking you, do you want me to relieve Ms. Lynch?"). Beyond the facial reason for requesting discharge – desire to employ a different attorney – Dilutis offered no other reason to support his request.

(2) The quality of counsel's representation prior to the request.

The second *Brown* factor, requires the review of the quality of the representation. Review of counsel's representation prior to the request reveals that Gordon diligently represented his client. The trial court was aware that Dilutis was not making a complaint regarding defense counsel's performance, in fact Dilutis said "[n]othing against Mr. Gordon." The quality of Gordon's representation was not challenged by Dilutis.

(3) The disruptive effect, if any, that discharge would have on the proceedings.

The third *Brown* factor is a consideration of the potential disruption if discharge is permitted. Having only started trial that afternoon, discharge of defense counsel would have further delayed and disrupted the proceedings. Taking into account prior postponements, the trial court determined that further delay caused by the discharge of counsel was not appropriate once a jury had been selected.

(4) The timing of the request.

The fourth *Brown* factor concerns the timing of the request itself. This request was made at a late stage in the proceedings, after the selection of the jury. The trial court highlighted the timing of the request when noting that Dilutis has "had quite a long time to decide [whether to discharge counsel, have hired private counsel, or represent himself.]" Confronted with a long term of incarceration in the proposed plea agreement, Dilutis understood the gravity of the proceedings and the trial court correctly interpreted his attempted discharge as a bid for delay.

(5) The complexity and stage of the proceedings.

The fifth *Brown* factor requires consideration of the complexity of the case and the stage of the proceedings. Proceeding with a case before a jury as a laymen presents challenges where rules of procedure and evidence are unknown and not followed. With the jury selected, discharge of counsel at that time would have required Dilutis to proceed to trial as an ill-prepared *pro se* defendant. A complex task for any non-attorney. Moreover, the trial court acknowledges that "[t]his case has been pending a long time" highlighting the late stage at which this request was made.

(6) Any prior requests by the defendant to discharge counsel.

The sixth *Brown* factor requires consideration of prior attempts to discharge counsel. Here, the request was Dilutis's second attempt that day to discharge counsel. The trial court was told by Gordon that a postponement had already been requested earlier that day for the same purpose of discharging counsel: "That was already requested today and done." Without a new reason for discharging counsel, the trial court understood Dilutis's second request in as many hours as a challenge to the "administration of justice."

The trial court considered each of the *Brown* factors and came to the only possible conclusion. We see no abuse of discretion.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.