Circuit Court for Baltimore County
Case Nos. 03-K-14-006299 & 03-K-14-006300

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 122

September Term, 2016

ROBERT CLIFFORD WEDDINGTON

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: July 17, 2017

Following a two-day trial, on February 3, 2016, a jury sitting in the Circuit Court for Baltimore County convicted appellant, Robert Weddington, of sexual abuse of a minor and second-degree child abuse. On February 5, 2016, another jury sitting in the Circuit Court for Baltimore County convicted appellant of three counts of second-degree rape and one count of sexual abuse of a minor. The court sentenced appellant to one hundred and twenty-five years' imprisonment, all but eighty-five suspended, with five years' probation.

On appeal, appellant presents four questions for our review.[1] We slightly rephrase the second issue as follows:

> Whether the trial court committed reversible error when it failed to conduct the mandatory Rule 4-215(e) hearing, prior to both trials, pursuant to appellant's request to discharge counsel.

[1] The issues appellant presents are:

1. Did the trial court commit reversible error when, upon learning after trial that a juror had failed to disclose that she had been the victim of sexual abuse, it made no effort to determine the reason for her non-disclosure?

2. Did the trial court commit reversible error when it failed to conduct the mandatory 4-215(e) hearing, before trial, pursuant to Mr. Weddington's request to discharge counsel?

3. Did the trial court abuse its discretion in denying Mr. Weddington's motion for a mistrial, when a State witness told the jury that Mr. Weddington had been previously incarcerated and insinuated that he was a drug dealer?

4. Did the trial court commit plain error when it failed to properly ask a mandatory voir dire question?

We hold that the trial court erred by failing to conduct a Rule 4-215(e) hearing prior to appellant's trials, vacate the judgments, and remand for two new trials. Consequently, we need not address appellant's remaining contentions.

FACTUAL AND PROCEDURAL BACKGROUND

On October 23, 2014, police officers arrested appellant and charged him with sexual abuse of minors D.H. and R.W. The State initiated two separate prosecutions against appellant: case 6299 for D.H.'s allegations, and case 6300 for R.W.'s allegations.

Appellant appeared before Judge Jan Alexander in the Circuit Court for Baltimore County on October 26, 2015, for a motions hearing.[2] Two days later, appellant wrote a letter addressed to Judge Alexander, requesting to discharge his trial counsel for both cases. On November 9, 2015, the court held a hearing, Judge Robert Cahill Jr. presiding, on the issue of appellant's letter to discharge counsel. At the hearing, appellant argued that his trial counsel had failed to pursue and investigate witnesses and documents which aided in his defense. The court concluded that appellant failed to establish a meritorious reason to discharge his counsel, and denied appellant's request.

On January 20, 2016, appellant wrote a second letter (the "second letter") to Judge Alexander, again requesting to discharge his trial counsel.[3] The second letter stated, in pertinent part:

[2] The record fails to indicate the nature of the motions hearing.

[3] Although addressed to Judge Alexander rather than to Judge Mickey Norman, the trial judge, the letter did correctly identify the case numbers.

> I was offered a deal of 16 years, going above my guidelines for this matter. When I question [sic] my Attorney on this, she said my guideline didn't matter. Talking down to me like I was guilty. I am sure cause [sic] of the nature of the charge and her gender, she is completely Bias [sic] towards me and not working in my best Interest on this case At All. . . .
>
> I'm asking the courts to order the child support cases between me and [R.W.'s] mom [J.R.W.] so the court will see she manipulating [sic] the system to keep herself out of trouble. Also I begging [sic] the court To reasign [sic] me a Attorney [sic] or Allow me to get my own?

The clerk's office received and date-stamped appellant's second letter on January 28, 2016. For unknown reasons, however, the letter was not filed in either of appellant's case files prior to his two trials.

Appellant proceeded to trial for case 6300 on February 2, 2016. Following a two-day trial before Judge Mickey Norman (the "trial court"), the jury convicted appellant of one count of sexual abuse of a minor and one count of second-degree child abuse. On February 4, 2016, the trial for case 6299 began before the same trial court. After another two-day trial, a jury convicted appellant of three counts of second-degree rape and one count of sexual abuse of a minor. At no point during either trial did appellant mention his second letter addressed to Judge Alexander, nor did appellant mention that he had wished to discharge his trial counsel.[4] Following his convictions, appellant moved for a new trial in both cases.

[4] At one point during case 6299, appellant attempted to ask the trial judge a question while his attorney was in the restroom. The court advised appellant to not say anything without his lawyer present.

At some point following appellant's convictions, the trial court learned of appellant's second letter. On March 14, 2016, the trial court held a hearing regarding appellant's second request to discharge his counsel. At the conclusion of the hearing, the court reserved judgment in order to review the transcript of appellant's November 9, 2015 hearing before Judge Cahill. On March 23, 2016, the trial court held another hearing and again allowed appellant to explain why the court should have granted his request to discharge trial counsel. Following argument, the trial court determined that "nothing contained in [appellant's] subsequent written request or the dialogue [appellant] had with this Court would warrant the discharge of counsel[.]"

On May 23, 2016, the trial court held a hearing on appellant's motion for new trial. The trial court denied appellant's motion, and appellant timely appealed.

STANDARD OF REVIEW

In *Williams v. State*, 435 Md. 474 (2013), the Court of Appeals articulated the standard of review for interpreting provisions of the Maryland Rules. "Our interpretations of [the Maryland Rules] 'are appropriately classified as questions of law.'" *Id.* at 483 (quoting *Davis v. Slater*, 383 Md. 599, 604 (2004)). Accordingly, "we review the issues [without deference] to determine if the trial court was legally correct in its rulings." *Id.* (citation and quotation marks omitted).

DISCUSSION

Maryland Rule 4-215(e) provides the following:

> (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) (1)-(4) of this Rule if the docket or file does not reflect prior compliance.

The Court of Appeals recently interpreted Rule 4-215(e) in *Williams*, a case directly on point. There, petitioner Melvin Williams sent a letter to the trial court requesting to discharge his trial counsel approximately sixteen months before his scheduled criminal trial. *Williams,* 435 Md. at 479-480. The clerk's office filed and entered Williams's letter into his case file, and sent copies to both the State's Attorney's Office as well as the local Public Defender's Office. *Id*. at 479. At no point prior to Williams's trial, however, did any judge presiding over any stage of Williams's case address the letter. *Id*. at 480.

Following his convictions for possession of cocaine and resisting arrest, the Court of Appeals considered whether the trial court erred by failing to address Williams's written request to discharge counsel prior to trial. *Id*. at 482. In reversing Williams's convictions, the Court of Appeals strictly construed the mandates of Rule 4-215(e). The Court stated, "Rule 4-215(e) is triggered by any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel." *Id*. at 486-87 (citations omitted). The Court explained, "Once Rule 4-215(e) is triggered, the trial court has an affirmative duty to address the defendant's request." *Id*. at 487. This duty required the trial court to

provide the defendant "with a forum in which he or she (and/or counsel) may explain the underlying reasons for the purported request to discharge counsel." *Id*. (citing *State v. Taylor*, 431 Md. 615, 633 (2013)). Noting that the clerk's office had date-stamped Williams's letter,[5] the Court held that "Williams's unambiguous and to-the-point letter was sufficient, on its own, to constitute a request to discharge counsel under Rule 4-215(e). The Circuit Court's failure to inquire into the reasons for that request before trial, in accordance with the Rule, is reversible error." *Id*. at 494.

In urging us to affirm appellant's convictions, the State proffers two arguments in which it primarily attempts to distinguish *Williams* from this case. Additionally, the State argues that we should review the matter under a harmless error analysis. We reject the State's arguments and vacate appellant's convictions.

Although the State concedes that the substance of appellant's second letter would trigger Rule 4-215(e), the State first argues that the second letter did not trigger the Rule because the trial court did not know about the second letter prior to trial. The State points out that, whereas in *Williams* the circuit court received and date-stamped Williams's letter sixteen months before his trial, here, the clerk stamped appellant's second letter on January 28, 2016, just five days before appellant's first trial. Additionally, whereas in *Williams* the

[5] With regard to the clerk's office date-stamping the letter, the Court of Appeals stated, "it is clear from [the Court of Appeals'] opinions that evidence of date-stamping or other handling of the letter by the court's clerk can be sufficient to charge the Circuit Court with receipt of the letter." *Williams v. State*, 435 Md. 474, 492 n.7 (2013) (citations omitted).

clerk placed Williams's letter in the court jacket of his case file, here, for unknown reasons, the clerk never placed appellant's second letter in the court's file prior to trial. Because the trial court did not possess appellant's second letter, the State argues that the second letter never triggered Rule 4-215(e).

The State merely articulates factual differences between *Williams* and this case, but these factual differences are not material to the holding in *Williams*. Nowhere in *Williams* does the Court of Appeals limit the time for making a discharge request prior to trial in order to trigger the Rule. Nor does *Williams* require that a written statement make its way into the defendant's case file in order to trigger the Rule. *Id.* at 492 n.7 (citations omitted). As stated *supra*, the trial court here received appellant's request prior to his trials when it date-stamped the second letter. Accordingly, we reject these contentions.

The State next posits that appellant cannot claim a violation of Rule 4-215(e) because he failed to renew his request to discharge counsel despite "numerous opportunities [to do so] at trial." Specifically, the State notes that appellant participated in two separate two-day trials, yet never orally expressed to the court his desire to discharge counsel. The State cites *State v. Northam*, 421 Md. 195 (2011), for the proposition that appellant's "behavior"—his silence about discharging counsel—during his two trials "compels the conclusion that knowledge of the letter should not be charged to the court." We conclude that, in light of *Williams*, the State's reliance on *Northam* is misplaced.

In *Northam*, petitioner Kendall Northam filed a motion captioned "For a Change of Venue," in which the fourth and final paragraph of the letter contained the following language:

> Regardless of my race, gender, or ethnic belief I feel as a [sic] American citizen I have the right to be judge [sic] properly and be granted the ability not only the venue of my trial changed but the ability to be represented by a Firm who has represented. Thereselves [sic] with Integerty [sic] and Justice. My Lawyer[']s filed are updated but he has made no contact with me and trial is set at Sept 24[.] I'm requesting a Court appointed attorney and Change of Venue.

Id. at 203. In determining that this statement failed to trigger Rule 4-215(e), the Court of Appeals agreed with the State's argument that Northam's "vague request that he wanted a 'Court appointed attorney,' buried in the final sentence of the final paragraph of what was captioned and pled specifically and solely as a change of venue motion stands in stark contrast to other cases where 4-215 inquiries were mandated." *Id*. at 206. Here, the State seizes upon language in *Northam* where the Court noted that Northam failed to make any request to discharge counsel in three court appearances after sending his letter. *Id*. at 207. The State notes that appellant similarly did not reiterate his request to discharge counsel at any time during either of his trials and argues that he therefore should not "get the benefit of the rule [4-215(e)]."

A careful reading of *Williams*, however, leads us to conclude that the State cannot rely on *Northam* for this proposition. In holding that Williams's letter alone triggered Rule 4-215(e), the Court of Appeals noted:

> The State's argument that Williams's letter was insufficient to trigger Rule 4-215(e) because the Rule requires that someone "utter something in open

> court that can reasonably be construed as a present desire by the defendant to discharge counsel" is well-intentioned, but unfounded. First, the plain language of the Rule states only that a court must inquire into the reasons for discharge "[i]f a defendant requests permission to discharge an attorney." Nowhere in the Rule does it state that such a request must be oral, as opposed to written, or made in open court. *We decline to adopt the State's categorical view that an out-of-open-court, written request filed with the court cannot alone compel an inquiry and disposition by the court.*

Williams, 435 Md. at 489 (emphasis added).

More importantly, the *Williams* Court clarified its holding in *Northam*, stating that Northam's letter substantively failed to trigger Rule 4-215(e):

> We did not hold in *Northam* that a request to discharge counsel must be made orally or in open court; nor did we hold that a request sufficient to trigger Rule 4-215(e) may be waived effectively by failure to repeat it or otherwise bring it to the court's attention once filed in writing. *We concluded that Northam's written request was insufficient to trigger Rule 4-215(e) because it was vague and obscured by the larger body of the written motion captioned as (and concerned with) a Motion for Change of Venue*. We touched briefly upon the matter of waiver in *Northam* only in the context of omnibus motions, where, like Northam's request for a "Court appointed attorney," a single sentence request or issue is concealed or obscured by other issues in the particular form where it is raised. Williams's request does not suffer from the problems of vagueness or obscurity—his request is singular and unambiguous. . . . Because we conclude that Williams's letter was sufficient for the Circuit Court to recognize it as a request to discharge counsel, the onus was on the Circuit Court to 'permit the defendant to explain the reasons for the request.' Md. Rule 4-215(e). By failing to do so, the Circuit Court violated the Rule.

Id. at 492 (emphasis added).

The State concedes "that the substance of [the second letter] would have served to trigger Rule 4-215 if the court had been aware of it." In light of this concession, the State's reliance on *Northam* is unfounded. Accordingly, we conclude that appellant's second letter

sufficiently explained his desire to discharge his trial counsel and triggered the requirements of Rule 4-215(e).

Finally, the State contends that the post-trial "hearings make it abundantly clear that [appellant] offered no new (or reasonable) basis on which to discharge counsel." (Footnote omitted). According to the State, any error resulting from the trial court's failure to inquire about appellant's reasons to discharge counsel is harmless.[6]

We have found no case holding that the harmless error doctrine applies to violations of Rule 4-215(e). The Court of Appeals, in discussing Rule 4-215 generally, has stated:

> Preliminarily, some comments about Rule 4-215 are in order. The Rule contains detailed procedural requirements concerning waiver of counsel in criminal cases. Rule 4-215 was intended to implement both the Sixth Amendment and the Article 21 right to counsel in criminal cases, as well as the Sixth Amendment right of self-representation. *When applicable, its provisions are mandatory, must be strictly complied with, and are not subject to a harmless error analysis*.

Lopez v. State, 420 Md. 18, 31 (2011) (emphasis added). Additionally, the Court of Appeals has held that a violation of Rule 4-215(a)(3) [advice of nature of charges and

[6] We note that, at the November 9, 2015 hearing, appellant told the motions judge that his attorney had failed to investigate certain alibi witnesses and documents. In his second letter, however, appellant told the court that the allegations were "false, Perpetuated by two vindictive x-wives [sic], using 3 Innocent children as Pons [sic] to exect [sic] There [sic] Rage on me." Whereas at the November 9, 2015 hearing appellant complained that his trial counsel had not pursued exculpatory evidence, in his second letter, appellant complained that his trial counsel had not explored his requested trial strategy, including potential impeachment evidence. Accordingly, we disagree with the State that appellant offered no new bases on which to discharge his counsel.

allowable penalties, including mandatory penalties] is not subject to harmless error analysis. *State v. Camper*, 415 Md. 44, 58 (2010).

We decline to endorse a harmless error analysis for violations of Rule 4-215(e). Moreover, we expressly reject that, under the circumstances here, the post-trial hearings could have cured the Rule 4-215(e) violations. Once Rule 4-215(e) was triggered, the court was required to permit appellant to explain the reasons for his request to discharge counsel. The court here allowed appellant to explain his reasons during the post-trial hearings and concluded that his reasons were not meritorious. However, it is impossible, *after trial*, to comply with the express provisions of the Rule, which provide:

> 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.

In short, a defendant has no opportunity post-trial to decide whether he wants to discharge counsel and represent himself. For these reasons, we reach the same conclusion here as the Court of Appeals did in *Williams*: "The Circuit Court's failure to inquire into the reasons for [the] request [to discharge counsel] *before trial*, in accordance with the Rule, is reversible error." 435 Md. at 494 (emphasis added).

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. CASE REMANDED TO THAT COURT FOR NEW TRIALS. COSTS TO BE PAID BY BALTIMORE COUNTY.