Circuit Court for Baltimore City
Case No.: 117208033

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2593

September Term, 2017

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DEONTRAY BROWN

v.

STATE OF MARYLAND

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Wright,
Graeff,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Battaglia, J.

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Filed: July 29, 2019

Appellant, Deontray Brown, was convicted of possession of cocaine by a jury sitting in the Circuit Court for Baltimore City. The court sentenced Brown to one year in prison. On appeal, in asking this Court to reverse the judgment of the Circuit Court, Brown presents the following question for our review:

> Did the lower court err in ruling that Appellant had no meritorious reason for wishing to discharge his trial counsel?

For the reasons set forth below, we shall answer Brown's question in the negative and shall affirm the judgment of the Circuit Court.

## FACTUAL BACKGROUND

On July 8, 2017, four officers with the Baltimore City Police Department observed a group of individuals, including Brown, walking down the street. One of the officers testified, at a suppression hearing in the instant case, that he had observed Brown reach toward his waistband, pull out a black object from his pants and make a throwing motion in the direction of a nearby roof, when he heard what sounded like a metal object hitting the roof. According to the testimony, the officers stopped Brown and asked him what he had thrown on the roof, but Brown denied having had thrown anything. After having also noticed that Brown had something in his mouth, the officers, according to the testimony, asked what it was and instructed Brown to spit it out. Brown spit out seven baggies of cocaine, which prompted his arrest. Eventually, police officers recovered a handgun from the roof.

The State charged Brown with possession of cocaine; possession with the intent to distribute cocaine; possession of a firearm with a nexus to a drug trafficking crime;

wearing, carrying or transporting a handgun; and possession of a firearm by a disqualified person. On the day of trial, Judge Althea Handy of the Circuit Court for Baltimore City granted Brown's motion for judgment of acquittal as to the charges of possession with intent to distribute and possession of a firearm with a nexus to a drug trafficking crime. With respect to the other charges, the jury ultimately convicted Brown of possession of cocaine and acquitted him of wearing, carrying or transporting a handgun and possession of a firearm by a disqualified person.

Relevant to this case is the fact that before trial Brown had been offered a plea deal, whereby Brown would have pled guilty to possession of a regulated firearm for which he would receive a sentence of five years. Brown did not accept the deal. On the day of trial, however, before jury selection began, Brown made a request to discharge his attorney, an assistant public defender, because he was dissatisfied:

> [BROWN]: I need another lawyer. He's not – he's not going to fight. He already – he already basically told me I'm going to lose. It's like, as he says I'm going to lose so it's like he's not – I don't see how I can lose this case, but he's – he's just basically sitting here telling me I'm going to – I'm going to lose, I need to take the deal. That's – I don't – I don't see how I can put my life in his hands when he's basically telling me you cannot beat this. If I can beat it in my own mind I don't see how you can't beat it. I don't --

Judge Handy informed Brown that if he discharged his public defender, he would not be given another one, pursuant to *Fowlkes v. State*, 311 Md. 586 (1988)[1] and that he would

[1] In *Fowlkes v. State*, 311 Md. 586 (1988), the Court of Appeals noted that, "for indigent defendants unable to retain private counsel, the right to counsel is but a right to effective legal representation; it is not a right to representation by any particular attorney." *Id.* at 605. Accordingly, the Court held that "the right to counsel does not give an accused

(continued . . .)

have to proceed without counsel, unless he could afford to hire one. She inquired about the reasons why Brown wanted to discharge his attorney:

> THE COURT: Sir, [your defense counsel] has been an attorney for how many years?
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> [BROWN]: Longer than I was born.
>
> [DEFENSE COUNSEL]: Thirty-eight.
>
> THE COURT: Exactly. And when I was a prosecutor I had cases versus him and I've seen him as a judge. He's a fine attorney. I suppose he's perhaps giving you his best assessment of the evidence. Sir, let me – I need to advise you of some things. Okay? And you can have a seat if you're more comfortable while I advise you of these things.
>
> First of all, sir, evidently you can't afford to hire an attorney because [your defense counsel] I know is employed by the Office of the Public Defender, who have really fine attorneys because they're in court ever[y] day. So you don't have a choice of which attorney in the Public Defender's Office you would have. So I just want to make sure that you understand that. If you want to discharge your attorney then you're going to be without counsel. Now, just tell me again the reasons you want to discharge [your attorney].
>
> ***
>
> [BROWN]: Ineff[ective] counsel, he just said that you can't – you can't beat it. He just – like I need a little bit of hope, he just basically told me in so many words he's not even going to try, because if he –
>
> THE COURT: He told you he's not – what words did he use to say – what did he say?
>
> [BROWN]: In so many words. I said do you think you can beat it, he said no I'm not going to beat it. He said – I said – he's talking about the five years, the offer was five (indiscernible), I told him I just did five years day

(continued . . .)
the unfettered right to discharge current counsel and demand different counsel shortly before or at trial." *Id.* Unless the defendant can show a meritorious reason for the discharge of current counsel, "a trial court may constitutionally require a defendant to choose between proceeding with current counsel and proceeding pro se[.]" *Id.* at 605–06.

> to day on that, I did 60 months. And he just said well you're going to have to do 60 months again. Like, --
>
> THE COURT: But that's not telling you he's not going to try to beat it.
>
> [BROWN]: Yeah, it's – it's the mindset. The mindset that he – as a lawyer he should be giving off a more of a positive vibe.
>
> THE COURT: So unrealistic? You want him to give you something that's – he has experience. He has assessed the evidence against you.
>
> [BROWN]: I have too.

Judge Handy proceeded to discuss the evaluation of the evidence:

> THE COURT: But you're not – did you go to law school, sir?
>
> [BROWN]: I don't even have the motions. I don't even have everything to basically look over. I feel as though as my attorney I'm not going to sit here and let him just do the whole thing, I'm going to do research and I'm going to try and find ways to help him help me. But it's like he --
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> THE COURT: Well you were arrested back in July, right?
>
> [BROWN]: Yes.
>
> THE COURT: Have you done your research?
>
> [BROWN]: Yeah, I've been – with the papers I got. And all I got was the statement of fact and the charge papers. That's all I got. I don't have – I don't have nothing else. I don't have none of the fingerprints or what the – all of the (indiscernible).
>
> ***
>
> THE COURT: There's eye-witness testimony from the police officer and from what I understand and recovery of a gun. . . . Now, whether or not the jury believes beyond a reasonable doubt that was your gun, that's for the jury to decide. . . . What I'm saying is your attorney is giving you his opinion of the evidence and the strengths and weaknesses of your case.

Brown explained why he believed his attorney could not properly represent him:

> [BROWN]: Because he's sitting her[e] telling me that he's not going to win. He's I'm not going to beat it, basically –
>
> THE COURT: He doesn't think he's going to win based on the evidence that he knows the State has.
>
> [BROWN]: But he's already saying –
>
> THE COURT: He's already made a motion to try and prevent some of the evidence from coming in. We've got to have that hearing, which we haven't had yet.
>
> [BROWN]: But – but he's telling me I'm going to lose. That's the only reason, so I feel like wow –
>
> THE COURT: Well so you want him to tell you you're going to win if it's not realistic?
>
> [BROWN]: No, but it's a 50/50 chance. I don't want him to say that like the State is –

Judge Handy proceeded to explain that trial is not necessarily a game of chance and that the assigned assistant public defender likely used his best judgment, based on his years of experience, to evaluate the State's evidence against Brown, but that his evaluation would not undermine his ability to fight for Brown:

> THE COURT: It's not necessarily a 50 – sir, this isn't gambling. He's got to use his best judgment based on his experience and based on the evidence that he believes the State can produce. So he is telling you he doesn't believe that this case can be successful. That doesn't mean he's not going to fight for you.
>
> Like I said, he already has made this motion to try to prevent the jury from hearing some statement you allegedly made that's on the body camera footage. I don't know anything about the case, that's the only information. You heard it the same time I heard it.

Judge Handy then addressed Brown's counsel, who assured her that he had reviewed with Brown the potential evidence, including body-camera footage and the statement of probable cause. Brown disagreed:

> THE COURT: [Brown] has the statement of probable cause. Was he given anything else [?]
>
> [DEFENSE COUNSEL]: We've looked at the body worn camera footage, Your Honor.
>
> THE COURT: So he did view the body camera footage?
>
> [DEFENSE COUNSEL]: Oh yes. Yes.
>
> THE COURT: So you've gone over the case with him?
>
> [DEFENSE COUNSEL]: Yes I have.
>
> THE COURT: What are you looking like that? Either he --
>
> [BROWN]: I wouldn't call that going over the case. We looked at it for a couple of seconds and I thought he was going to go – we'd come together and make a strategy about beating this case. I feel as though – I really feel strongly I really can beat it, because from what they're saying, their statements that they're making if you could read it, like it's just – it just sounds really stupid. Like he really just pointed me out of a bunch and said I did this.

Judge Handy, however, ultimately determined that Brown's rationale for requesting to discharge his attorney lacked merit because of Brown's "unrealistic" assessment of the evidence and what efforts the attorney would make on his behalf:

> THE COURT: Well what else do you expect him to do, sir? Your attorney to do? I do not find that you have a meritorious reason for discharging your attorney. You have an unrealistic, apparently, view of things. Who knows, you can never tell what a jury is going to do. Cases that you think they're going to find someone not guilty they find them not guilty – I mean they find them guilty and vice-versa. But there is nothing that you have provided that

> makes me think in any way [your attorney] would not try his hardest if you choose to go to trial.
>
> Now, we are going to proceed to trial today as scheduled. If you want to discharge [your attorney] you will be representing yourself. And it almost sounds like you think you can do a better job. You keep saying I can beat this.
>
> [BROWN]: There's no – I don't – I feel – I need his expertise, I need his – I want for him to listen, like work together. This is my life, this is my freedom. Like at the end of the day if I get found guilty I'm going to prison, not nobody else. So for him to have such a negative outlook on the case is like I'm working against him and everybody else. Like . . . he needs to be on my side.
>
> THE COURT: -- I know that [your attorney] will do his best to represent you if this case goes forward. And the case is going forward. But it's up to you. So whether you want to represent yourself or you want [the assistant public defender] to represent you.

Amidst the discussion regarding Brown's request to discharge counsel, Brown inquired with the Court as to why the State did not offer him less than five years in prison as part of the plea deal. Judge Handy addressed his concern by discussing how Brown's prior convictions could impact a sentence for possession of a firearm as a disqualified person, if Brown were convicted.[2] Following this colloquy, Judge Handy reiterated her finding that Brown failed to provide a meritorious reason for the discharge and asked how he wanted to proceed, given that Brown had rejected the plea offer:

> THE COURT: And I didn't think, like I said, that you had meritorious reasons. I felt like [your attorney] is just giving you the reality of the

[2] Pursuant to Section 5-133(c)(1)(ii) of the Public Safety ("PS") Article, Maryland Code (2003 Repl. Vol., 2011 Supp.), a "person may not possess a regulated firearm if the person was previously convicted of . . . a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612, § 5-613, § 5-614, § 5-621, or § 5-622 of the Criminal Law Article[.]" "[A] person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years and not exceeding 15 years." PS § 5-133(c)(2)(i). "The court may not suspend any party of the mandatory minimum sentence of 5 years." PS § 5-133(c)(2)(ii).

> situation. And so, you know what your options are, so what do you want to do? I don't understand. What do you –

Brown then chose to continue with his assigned assistant public defender.

> [BROWN]: I'm going to go through with this. I don't –
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> THE COURT: Go through what, sir?
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> [BROWN]: I'm going to go through with him as my counsel, I don't want to make myself look worse than it already is by me representing myself. And I don't –
>
> THE COURT: Okay. Well you know what? So you're saying you want to go to trial?
>
> [BROWN]: Yes, I'm not copping out, no. I didn't do nothing. I'm not guilty of nothing.
>
> THE COURT: Okay. And the record will speak for itself. . . . In terms of [your attorney] and his ability to defend you and how zealously he does defend you, that's fine sir. You can certainly make that choice.
>
> [BROWN]: Thank you, Your Honor.

Following the jury's verdict, Brown noted a timely appeal.

## DISCUSSION

Maryland Rule 4-215(e) governs situations in which a defendant seeks to discharge counsel and 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.

The Rule does not define "meritorious." *Dykes v. State*, 444 Md. 642, 652 (2015). The Court of Appeals, however, has equated the term with "good cause." *Id.* (citing *Gonzales v. State*, 408 Md. 515, 531–33 (2009); *State v. Campbell*, 385 Md. 616, 627 (2005); *State v. Brown*, 342 Md. 404, 413 (1996)). "Good cause" to discharge counsel may be found when there is a "conflict of interest, a complete breakdown of communication or an irreconcilable conflict which leads to an apparently unjust verdict." *Brown*, 342 Md. at 415 (quoting *McKee v. Harris*, 649 F.2d 927, 931 (2d Cir. 1981), *cert. denied*, 456 U.S. 917, 102 S. Ct. 1773, 72 L.Ed.2d 177 (1982)). When an attorney-client conflict serves as the basis of the discharge request, the grant of the motion is appropriate "when counsel and defendant are so at odds as to prevent presentation of an adequate defense." *Cousins v. State*, 231 Md. App. 417, 443, *cert. denied*, 453 Md. 13 (2017) (quoting *Weathers v. State*, 231 Md. App. 112, 140–41 (2016) (Graeff, J., concurring) (internal citation omitted)). "A disagreement regarding legal strategy is not, however, a meritorious reason to discharge counsel." *Cousins*, 231 Md. App. at 443. This Court, however, has noted that there are "few examples of what constitutes a 'meritorious' reason in Maryland case law." *Weathers*, 231 Md. App. at 134.

The determination that a defendant had no meritorious reason to discharge counsel under Rule 4-215(e) is reviewed under an abuse of discretion standard. *Cousins*, 231 Md. App. at 438 (citing *State v. Taylor*, 431 Md. 615, 630 (2013)). "To constitute an abuse of

discretion, the decision 'has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Id.* (quoting *Evans v. State*, 396 Md. 256, 277 (2006)).

Brown primarily contends that he had a meritorious reason for requesting the discharge, because he had a "palpable distrust" of his counsel arising from their discussions regarding the likelihood of success at trial. Brown avers that his attorney considered the case to be a "loser" and that his preferred course of action would have been for Brown to have accepted the State's plea offer. Brown argues that his attorney's attitude did "not inspire confidence; rather, it only" created "concern." As such, Brown urges that the trial court abused its discretion when it required Brown to proceed with his attorney or self-represented.

The State conversely argues that the trial judge acted within her discretion when she determined that Brown's reasons for requesting to dismiss his attorney lacked merit, as Brown's feeling of discomfort by counsel's advice did not rise to the level of "good cause" evinced by Rule 4-215(e).

We agree with the State. Our cases and those of the Court of Appeals interpreting the Rule lead us to conclude that the trial judge did not abuse her discretion in determining that Brown lacked a meritorious reason for discharging his attorney.

In *Dykes, supra*, 444 Md. 642, the Court of Appeals acknowledged a meritorious reason for seeking the discharge of counsel. In the case, over the course of approximately eighteen months, Dykes appeared before several different judges in pretrial settings, repeatedly expressing his desire to discharge his assistant public defender, based upon his

growing distrust of the attorney and a greater distrust of the Office of the Public Defender ("OPD"). *Id.* at 655. As a basis for his distrust, Dykes cited to an instance at one of the pre-trial hearings where an assistant public defender could not confirm whether she had received DNA evidence from the State or whether the evidence had been lost during a recent office move. *Id.* at 657. Dykes further believed that "the OPD altered paperwork to make him look guilty" and that the OPD was "not being truthful with the court." *Id.* at 658, 661.

Dykes ultimately requested that he not be represented by the Office of the Public Defender, whereupon the trial judge found a "palpable and obvious distrust that the Defendant has with respect to the Office of the Public Defender and specific attorneys that have been assigned to him. . . . And I find that it is clearly a meritorious reason for his request[.]" *Id.* at 663. In affirming the trial judge's determination, the Court of Appeals distinguished Dykes' case from those "in which the defendant attempted to manipulate the court on the eve of trial by asserting his right to counsel or withdrawing a waiver of counsel on the eve of trial." *Id.* at 667. *See also Weathers*, 231 Md. App. at 138–39 (holding that appointed attorney's admitted failure to discuss the case with the defendant prior to trial constituted a meritorious reason for discharge).

Conversely, this Court, in *Cousins*, *supra*, 231 Md. App. 417, held that the trial judge did not abuse his discretion when he determined that Cousins lacked a meritorious reason on the eve of trial to discharge his counsel. Cousins had based his request to discharge counsel, in part, on the fact that his attorney refused to play two hours of footage during a suppression hearing of Cousins passing time in a room after he had been

interviewed by the police at the station; following the suppression hearing, Cousins filed a grievance contending that the resulting breakdown of relationship between him and counsel was a meritorious reason for discharging his attorney. The trial judge disagreed. We affirmed, remarking that though Cousins "may have harbored acrimony towards defense counsel," such acrimony resulted from Cousin's "unreasonable demands and did not rise to the level of 'good cause' to warrant discharge of counsel." *Id.* at 442 (citations omitted). The timing of the request on the eve of trial was also a factor in undermining the merit of the request.

We again affirmed a trial judge's determination that the defendant had failed to provide a meritorious reason for discharging his counsel in *Alford v. State*, 202 Md. App. 582, 610 (2011), where "defense counsel had filed reasonable motions and acted reasonably in an effort to defend appellant." There, after the jury had been selected, but before the presentation of opening statements, Alford requested to discharge his attorney. As the basis for the request, Alford complained that his attorney did not communicate with him or otherwise collaborate with him to develop a defense, but instead, encouraged him to accept a plea offer. Alford also informed the trial judge that his attorney instructed him to commit perjury, an allegation the trial judge rejected. Alford further contended that he and his counsel constantly disagreed about trial strategy and that the assistant public defender clearly did not want to work on the case, as she had asked her supervising attorney to be removed from the case after Alford had filed a grievance against her.

The trial judge, while recognizing an obvious tension between Alford and his attorney, found Alford's reasons for discharge to lack merit and noted that the timing of

the request to be questionable, because the grievance had been filed months before. On appeal, we recognized that although "tension existed between counsel and appellant," the tension "was not so unusual to rise to the level of interfering with the defense in appellant's case" and "appellant was simply trying to delay trial, given that he filed a grievance months before trial but did not take affirmative action to discharge counsel until the day of trial." *Id.*

Applying the tenets gleaned from these cases, we hold that Judge Handy properly exercised her discretion in determining that Brown's reason for discharging his attorney, presented on the day of trial, lacked merit. During the colloquy with Brown, Judge Handy inquired about his bases to discharge counsel and found that the attorney had presented his reasoned evaluation of the merits of the case against Brown. She further found that despite any acrimony between Brown and the attorney that may have arisen because of Brown's expectations about the result of the case, such acrimony did not rise to the level of a complete breakdown in communication so as to prevent the presentation of an adequate defense, which, in fact, had been furthered by the motion to suppress that the public defender had already filed. Brown's need to have his attorney give "a more positive vibe" and have a more optimistic "mindset" regarding the likelihood of success did not constitute meritorious reasons for discharge; certainly, that Brown interposed his request on the day

of his trial undercut the notion of its merit. As a result, we agree with Judge Handy's determination and conclude that Brown's request to discharge counsel fell short of the level of good cause required by Rule 4-215(e).

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**