Circuit Court for Baltimore City
Case No. 117341019

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2686

September Term, 2018

JOSEPH EVANS

v.

STATE OF MARYLAND

Berger,
Arthur,
Reed,

JJ.

Opinion by Berger, J.

Filed: January 3, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Joseph Evans, appellant, was charged, in the Circuit Court for Baltimore City, with possession of marijuana, possession of heroin, possession with intent to distribute heroin, and possession of paraphernalia. After a jury failed to reach a verdict on those charges, the court declared a mistrial, and appellant was retried. During appellant's second trial, the court twice found appellant guilty of direct criminal contempt. A jury ultimately found appellant guilty of possession of marijuana and possession of paraphernalia, but the jury failed to reach a verdict on the heroin charges. Following a third trial, a jury found appellant guilty of possession of heroin but not guilty of possession with intent to distribute heroin. The Court sentenced appellant to a term of five months and 29 days' imprisonment on one of the contempt convictions; a term of five months and 29 days' imprisonment on the second contempt conviction; a term of six months' imprisonment on the conviction of possession of marijuana; and a term of one-year imprisonment on the conviction of possession of heroin. In this appeal, appellant presents three questions for our review, which we have rephrased as[1]:

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[1] Appellant phrased the questions as:

> 1. Was appellant's waiver of counsel knowing and voluntary?
>
> 2. Should appellant's direct criminal contempt convictions be vacated because the court failed to comply with the requirements of Rule 15-203 and, alternatively, was a single contempt conviction, as opposed to two convictions with consecutive maximum sentences, appropriate under the circumstances of this case?

(Continued)

1. Whether the appellant knowingly and voluntarily waived his right to counsel.

2. Whether the circuit court erred in failing to issue a written order regarding appellant's convictions of direct criminal contempt.

3. Whether the circuit court erred in twice finding appellant guilty of direct criminal contempt and/or in imposing a separate sentence for each conviction.

For reasons to follow, we hold that appellant knowingly and voluntarily waived his right to counsel. We also hold that, although the circuit court did not err in twice finding appellant guilty of direct criminal contempt or in imposing separate sentences for those convictions, the court did err in not issuing a written order regarding those findings. Accordingly, we vacate those judgments and remand the case to the circuit court with instructions to enter the appropriate written order, as discussed in greater detail below. Otherwise, we affirm.

BACKGROUND

Appellant's Discharge and Waiver of Counsel

As noted, appellant was charged with various drug-related crimes. On May 5, 2018, appellant appeared in court with defense counsel for a postponement hearing. During that hearing, appellant informed the court that defense counsel had "been terminated." The circuit court responded that the State had been "sent to trial in another case" and that, as a

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3. If this Court upholds the findings of direct criminal contempt, should appellant's consecutive five-month-and-twenty-nine-day maximum consecutive sentences be reduced?

result, appellant's case could not "be heard at this time." The court then reset the matter for June 15, 2018.

When the parties returned to court on that date, appellant, still represented by defense counsel, again stated that defense counsel had "been terminated." The circuit court responded that defense counsel had not been terminated and that he was "still the attorney of record in this matter." The State then indicated that it had spoken with defense counsel and that the parties had agreed to a postponement. At that point, appellant objected, stating that he was "not an incompetent ward of the state" and that he did "not need anyone to represent [him]." The court ultimately reset the matter to August 24, 2018.

At the start of that hearing, appellant, still represented by defense counsel, once again stated that defense counsel had "been terminated." Appellant added that he was "an aggrieved man" and that he did "not need anyone to represent [him]." When defense counsel tried to explain the situation to the court, appellant continually interrupted him. Finally, after appellant interrupted an exchange between the court and the State, the court addressed appellant directly:

> THE COURT: All right. Sir, I'm just trying to find out what the status of the case is. So, Mr. Evans, it's my understanding you want to represent yourself; is that correct?
>
> [APPELLANT]: I am an aggrieved man. I am an aggrieved man standing in the sovereign spirit.
>
> THE COURT: It's a yes – Mr. Evans, it's –
>
> [APPELLANT]: I'm here to [re]present myself.

> THE COURT: Okay. Mr. Evans, this is some yes or no questions. Do you want to represent yourself?
>
> [APPELLANT]: I am [re]presenting myself as an aggrieved man.
>
> THE COURT: So you would like to act as your own attorney?
>
> [APPELLANT]: I am an appropriate person[] [re]presenting myself. Appropriate persona means a proper person. I am a proper person [re]presenting myself.
>
> THE COURT: Okay.
>
> [APPELLANT]: And I do not need anyone to represent me.
>
> THE COURT: And you would like to terminate the attorney whose appearance is currently in the case?
>
> [APPELLANT]: Counsel has been terminated on previous enterings of this matter in which I would like to bring a resolution to, My Honor.

Following that exchange, the circuit court informed appellant of the nature of the charges and the maximum penalties. In so doing, the court continually asked appellant if he understood those facets of the case. Appellant provided nonresponsive answers, instead repeating that he would "conditionally accept to have any trial upon proof of claim" and asking whether it was "a tort action or a commercial crime." When the court explained that it was "a criminal matter" and then tried to review the charges again, appellant interrupted the court with various "objections." After one of those interruptions, the court had the following exchange with appellant:

> THE COURT: I'm going to finish explaining to you what the charges are. So I've laid out the charges. … You do have a right to be represented by counsel. It's my understanding you

have discharged counsel and you wish to represent yourself. Do you understand, sir, that if you proceed by way of trial in your case, that you will be required to follow the rules of evidence and the applicable court rules?

[APPELLANT]: I do not understand why I am here. Is this a tort action or a commercial crime? If this is a tort action then where –

THE COURT: It is not a tort action, Mr. Evans.

[APPELLANT]: If it's not a tort action then –

THE COURT: You've been charged with crimes, sir.

[APPELLANT]: Can you show it to me in the Constitution?

THE COURT: All right. Mr. Evans, are you prepared –

[APPELLANT]: I will conditionally accept to have any trial upon proof of claim.

* * *

THE COURT: Mr. Evans, are you prepared to go forward with your trial today?

[APPELLANT]: I conditionally accept to have any trial upon proof of claim that you can bring forth anyone that has a verified claim against me because in the jurisdiction of adversary, you cannot have a claim unless you first bond the claim. Is there anyone here with a verified claim against me? If you cannot provide such, then I demand to be released from custody immediately.

* * *

THE COURT: Okay. All right. Well, the court finds that Mr. Evans has voluntarily waived his right to counsel and wishes to proceed representing himself.

Defense counsel then informed the circuit court that appellant had refused to accept any discovery materials from defense counsel. The court directed defense counsel to return the materials to the State so that the State could hand the materials to appellant. Shortly thereafter, the circuit court ended the proceedings, and the parties returned to court several days later for the start of appellant's trial.

At the beginning of those proceedings, which were being presided over by a different judge than the one who had presided over the previous hearings, the court asked appellant if he was "Mr. Evans," and appellant responded that Joseph Evans was not his name and that he was acting "as intervenor for Joseph Evans." After the court attempted, unsuccessfully, to understand what appellant was trying to say, the court noted that appellant was unrepresented by counsel. When the court asked appellant if he wished to have an attorney, the following exchange occurred:

> [APPELLANT]: On the record, for the record, my honor, I am intervenor and propria persona. And the Court has been given notice and on – in file – on – on file for the record.
>
> THE COURT: So is that a yes or a no? Do you wish to have an attorney?
>
> [APPELLANT]: I conditionally accept to have any representative upon proof of claim that there is a injured party or that it's property that obligates me is this – for the record, is this a tort action or a commercial crime?
>
> THE COURT: This is a criminal offense that you've been charged with.
>
> [APPELLANT]: So is that tort or is that –

> THE COURT: No, it's not tort. Tort is a civil action. This is a criminal action.
>
> [APPELLANT]: Okay.

The circuit court then informed appellant of the nature of the charges and the maximum penalties for each charge. The court also explained to appellant the benefits of having an attorney. Finally, when the court asked appellant what he was "going to do with respect to having an attorney," appellant stated that he would "conditionally accept to have any trial upon proof of claim" and "conditionally accept to have the delegation of authority order in written form." The following colloquy ensued:

> THE COURT: Well, you have appeared here today without an attorney. You're not indicating any desire to have an attorney. May I see the court file, please?
>
> * * *
>
> So I see that [defense counsel] entered his appearance, this says January 5th, 2018. So Friday, I'm being told, you fired your attorney, sir? You fired your attorney Friday? You didn't wish [defense counsel] to represent you?
>
> [APPELLANT]: My honor, I am an aggrieved man standing here. My side was scourged, standing here on dry ground in the flesh. I conditionally accept to have any trial upon proof of claim that – that there is a delegation of authority order in written form for me to examine –
>
> THE COURT: Sir, you sound like you're –
>
> [APPELLANT]: - I conditionally accept.
>
> THE COURT: - you know, reasonably intelligent, but you refuse to answer my questions. It's a very simple question.

[Defense counsel], his appearance was entered in this case as your representative. Did you fire him on Friday?

[APPELLANT]: My honor, I am a sovereign soul. I do not need anyone to represent me. I am in propria persona –

THE COURT: Okay. So you –
[APPELLANT]: - which means proper person.

THE COURT: - so you don't want representation then?

[APPELLANT]: I am presenting the sovereign soul, the aggrieved man that's before you.

THE COURT: Okay. Well, I – I just want to make sure that you – you don't want any representation. I'm not sure how he came about to entering his appearance, but you do understand the case is not being postponed even though you fired [defense counsel]? You understand that? We're going to proceed; correct? You under –

[APPELLANT]: I – I conditionally accept to have any trial upon proof of claim that the Court has been given notice. And for the record, I stand mute.

THE COURT: For the record, you stand what?

[APPELLANT]: For the record, I stand mute.

THE COURT: "Mute?" Oh. Okay. So do you have your charging document?

[APPELLANT]: I conditionally accept to receive any documents on proof of claim that the delegation of authority order is presented for my – for my examination giving anyone here today authority over me.

* * *

THE COURT: I think you're very disrespectful because you will not answer my questions. You are just ignoring my questions.

* * *

> Generally when a judge asks you a question, you answer the question.
>
> [APPELLANT]: Am – am I obligated? Is there a contract that obligates me to receive anything from any – any public officials?
>
> THE COURT: Well, if you don't want to be found in contempt, yeah, I guess you're obligated. Because if you are found in contempt, and you are not responding and doing what I direct you to do, you could be held in contempt, and you could be sentenced to jail.
>
> * * *
>
> Now, what I'm trying to find out is if you have a copy of the charging document that indicates your notice as right to counsel, which I'm sure you know about because you have an attorney representing you.
>
> I know – I'm sure that you know how important an attorney can be. And I just explained to you how important an attorney can be. I've told you the allowable penalties.
>
> There are no mandatory penalties in his case, are there?
>
> [STATE]: Nothing was filed for the mandatories, yes, Your Honor. So, no.
>
> THE COURT: You won't really respond to my question about whether or not you want to waive counsel, but I guess it's clear that you do.
>
> And I told you that we're going to proceed if you – since you decided to fire your counsel, we're proceeding to trial, and I – you'll be representing yourself.

Appellant's trial thereafter commenced. Ultimately, the jury was unable to reach a verdict on any of the charges, and the court declared a mistrial.

Contempt Findings

At appellant's second trial, which began on September 4, 2018, and was presided over by the same judge who presided over appellant's first trial, the circuit court began the proceedings with some preliminary matters before jury selection. In so doing, the court had the following exchange with appellant, who remained unrepresented by counsel:

> THE COURT: Mr. Evans, I want you to – I want to go over the rules with you for this trial.
>
> [APPELLANT]: By what authority does an actor of fiction come before me?
>
> THE COURT: Stand up.
>
> [APPELLANT]: By what authority –
>
> THE COURT: Stand up.
>
> [APPELLANT]: By what authority –
>
> THE COURT: All right. We're going to have a contempt hearing right now.
>
> [APPELLANT]: By – I hold you in contempt. I hold you in contempt. By put your delegation of authority order before me now.
>
> THE COURT: All right. We'll have a contempt hearing at the end of the trial.
>
> [APPELLANT]: Put your delegation of authority order before me now.
>
> THE COURT: But, sir, you know how this works now.
>
> [APPELLANT]: Put your delegation of authority order before me now.

> THE COURT: And, I – let me tell you what's going to happen. If you don't stop –
>
> [APPELLANT]: You do it again, I will hold you in contempt.
>
> THE COURT: If you don't stop – if you don't stop talking out, -
>
> [APPELLANT]: The fine is a hundred thousand dollars over (inaudible).
>
> THE COURT: - you're going to be tried in absentia.
>
> [APPELLANT]: - to you and your superior.
>
> THE COURT: And, sir, you are going to be tried in absentia.
>
> [APPELLANT]: Put your delegation of authority before me now.
>
> THE COURT: I'm telling you right now. I have warned you.
>
> [APPELLANT]: Put you – you have been warned. You have been warned. And you – you are now fined in contempt. The liens of all public officials is on the way.
>
> THE COURT: All right. All right. We're going to have a contempt hearing right now.

The circuit court then stated that it had found appellant in direct criminal contempt, noting that appellant "refuses to be quiet" and "refuses to stand." The court added that it had "personally seen, heard, and perceived the conduct constituting contempt" and that appellant's behavior had "interrupted the order of the Court and interfered with the dignified conduct of the Court's business." The court imposed sanctions summarily and sentenced appellant to a term of five months and 29 days' imprisonment. The court also explained to appellant how the sentence could be reconsidered or appealed.

When the proceedings resumed, appellant continued to be generally disruptive. The circuit court warned appellant that if he "continu[ed] to behave like this" the court would hold "another contempt hearing." After appellant refused to cease his disruptive behavior, the court had him removed from the courtroom.

Approximately 26 minutes later, appellant returned to the courtroom and had the following exchange with the court:

> THE COURT: All right. Thank you. And Mr. Evans is present in court.
>
> [APPELLANT]: Objection.
>
> THE COURT: Mr. Evans, you know how this works.
>
> [APPELLANT]: Objection.
>
> THE COURT: Because you –
>
> [APPELLANT]: Objection.
>
> THE COURT: - we had a trial here before as I stated earlier. If you do not abide by the rules, and you disrupt the court, you are going to be taken downstairs and you will be tried in absentia. Now, I'm warning you about this right now before the jury comes over.
>
> [APPELLANT]: Put your delegation of authority order before me now.
>
> THE COURT: Let the record reflect the defendant refuses to stand when he addresses the Court.
>
> [APPELLANT]: I am the authority here. I am a sovereign.
>
> THE COURT: If you continue to yell out and disrupt the proceedings, I want you to understand you will be taken down to the lockup.

Despite those warnings, appellant's disruptive behavior continued, which led to the following exchange:

> THE COURT: Sir, please be quiet. You are disrupting the proceedings … in the court. You cannot just shout out the way you continue to do so.
>
> [APPELLANT]: What is your authority to question mine? Are you questioning my authority? Acquiesce has not been demonstrated. I demand to be released from custody. I demand a release. I demand all charges be terminated.
>
> THE COURT: All right. One – once again, the defendant is disrupting the proceeding in this courtroom. The jury –
>
> [APPELLANT]: Objection.
>
> THE COURT: - is about to come through the door at any moment. He refuses to be quiet.
>
> [APPELLANT]: Objection.
>
> THE COURT: He continues to –
>
> [APPELLANT]: My honor?
>
> THE COURT: - disrupt the courtroom. Therefore, I am finding him in direct criminal contempt.
>
> [APPELLANT]: I find you in contempt.

The circuit court then stated that the record was "quite clear" as to the conduct constituting the contempt. The court added that it had personally witnessed said conduct and that the conduct had interrupted the order of court and interfered with the court's business. The court sentenced appellant to another term of five months and 29 days'

imprisonment, which was to be served consecutively to appellant's previous sentence of five months and 29 days.

The jury ultimately convicted appellant of possession of marijuana and possession of paraphernalia, but the jury was unable to reach a verdict on the charges of possession of heroin and possession with intent to distribute heroin.[2] On September 6, 2018, the court sentenced appellant on those convictions. The next day, appellant was retried on the remaining charges. On September 10, 2018, the jury convicted appellant of possession of heroin but acquitted him of possession with intent to distribute heroin. That same day, the court sentenced appellant on that conviction. Appellant thereafter filed the instant appeal, which was docketed by the court on October 9, 2018.

MOTION TO DISMISS

The State has filed a motion to dismiss appellant's appeal, raising two issues. First, the State argues that appellant's appeal is untimely with respect to his convictions of contempt, possession of marijuana, and possession of paraphernalia because, according to the State, those judgments were entered more than 30 days prior to the filing of appellant's appeal. Second, the State argues that appellant's appeal with respect to his contempt convictions is premature because the appeal was filed before the entry of a written order, which, the State concedes, is missing from the record.

[2] The jury also convicted appellant of possession with intent to distribute marijuana. Although appellant was initially sentenced on that charge, the court later vacated the sentence after discovering that appellant was never charged with that particular crime.

We disagree with both of the State's contentions. To be sure, an appeal must be filed within 30 days after entry of the judgment. Md. Rule 8-202(a). Ordinarily, an appeal is considered "filed" on the date noted by the clerk on the appeal, which in this case was October 9, 2018. Md. Rule 1-322(a). Therefore, appellant's appeal of his contempt convictions and his possession convictions, which were entered on September 5, 2018, and September 6, 2018, respectively, would ordinarily be considered untimely.

That said, Maryland Rule 1-322(d) provides that, in the case of a self-represented individual who is confined to a correctional facility and has no direct access to the postal service, an appeal is considered "filed" on the day that the appeal was deposited in an appropriate receptacle or given to an appropriate employee of the facility for mailing. Md. Rule 1-322(d)(1) and (2). The Rule also provides that the date of filing may be proved by either the date stamp affixed by the facility to the appeal or by a "Certificate of Filing" attached to the appeal, provided that the certificate is substantially in the form indicated by the Rule. Md. Rule 1-322(d)(3) and (4).

Here, appellant, as a self-represented individual confined to a correctional facility, included with his appeal a "Certificate of Service" that was substantially in the form required by Rule 1-322(d). That certificate stated that appellant's appeal was mailed to the circuit court for filing on October 1, 2018. Thus, appellant's appeal was timely filed.

As for the State's claim that appellant's appeal of his contempt convictions is premature in the absence of a written order, we also disagree. For each of the contempt convictions, the court announced its findings and imposed a sanction on the record in open

court, and the clerk later entered those rulings on the court's docket. *Cf. Director of Finance of Prince George's County v. Cole*, 296 Md. 607, 613-14 (1983) (trial judge's oral ruling of contempt did not constitute an appealable contempt order where "the court noted no sanction or purging provision, both essential elements of a valid contempt order."). Therefore, even without a written order, appellant's contempt convictions were appealable. *See* Md. Code, Cts. & Jud. Proc. § 12-304(a) ("Any person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court and adjudging him in contempt of court, including an interlocutory order, remedial in nature, adjudging any person in contempt, whether or not a party to the action."); *See also Bryant v. Howard County Dept. of Social Services ex rel. Costley*, 387 Md. 30, 45 (2005) ("[T]he plain wording and a common sense reading of § 12-304 indicate an intent to permit an appeal from the adjudication of contempt itself[.]"). Even so, it is clear from the record that the court's contempt findings and sanctions were intended to be "final judgments" and thus appealable. *See Metro Maintenance Systems South, Inc. v, Milburn*, 442 Md. 289, 297 (2015) (noting that the statute that permits appeal of final judgments "does not define finality, but instead leaves it to [the appellate court] to determine what makes a judgment 'final.'").

DISCUSSION

I.

Appellant first contends that he did not validly waive his right to counsel. Appellant asserts that his waiver was "constitutionally infirm" because there is nothing in the record

to indicate that he understood the right he was giving up and because, given his "highly unconventional and non-responsive" answers to the court's questioning, "the court should have been on notice that a more probing inquiry was necessary to support a valid waiver." Appellant also asserts that his waiver "did not comply with Maryland Rule 4-215" because the court did not make a finding as to whether his request to discharge counsel was meritorious; did not consider continuing the action; and failed to make an on-the-record determination that his waiver was knowing and voluntary. We disagree.

Under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights, "a criminal defendant 'has an independent constitutional right to have the effective assistance of counsel and to reject that assistance and defend himself.'" *Dykes v. State*, 444 Md. 642, 647-48 (2015) (quoting *Williams v. State*, 321 Md. 266, 270-71 (1990)). "In circumstances where a defendant elects to forego the assistance of counsel to represent himself, the court must permit the defendant to proceed *pro se* if the request is timely and unequivocal." *State v. Campbell*, 385 Md. 616, 626-27 (2005). Further, "[b]ecause a defendant, by choosing to represent himself, is waiving the right to counsel, the court must conduct an inquiry to ensure that the defendant's waiver of counsel is knowing and intelligent." *Id.* at 627. "The right to self-representation is absolute upon a valid waiver of the right to assistance of counsel." *Smith v. State*, 71 Md. App. 165, 170 (1987).

In addition, "Maryland Rule 4-215(e) outlines the procedures a court must follow when a defendant desires to discharge his counsel to proceed *pro se* or to substitute counsel[.]" *Campbell*, 385 Md. at 628. Under that Rule:

> If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

Md. Rule 4-215(e).

Maryland Rule 4-215(a), which is embodied in Rule 4-215(e), "implements the constitutional mandates for waiver of counsel, detailing a specific procedure that must be followed by the trial court in order for there to be a knowing and intelligent waiver." *Richardson v. State*, 381 Md. 348, 367 (2004) (citations and quotations omitted). Under that Rule, the court must ensure that the defendant has received a copy of the charging document; inform the defendant of his right to counsel and the importance of counsel; and advise the defendant of the nature of the charges and the allowable penalties. Md. Rule 4-215(a). In addition, the Rule requires that the court conduct a "waiver inquiry" pursuant

to Maryland Rule 4-215(b), which states, in relevant part, that the court "may not accept the waiver until, after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel." *Id.*

The Court of Appeals has stated that "the Maryland Rules are precise rubrics" and that "the mandates of Rule 4-215 require strict compliance." *Pinkney v. State*, 427 Md. 77, 87 (2012). "Thus, a trial court's departure from the requirements of Rule 4-215 constitutes reversible error." *Id.* at 88. We review a trial court's interpretation and implementation of Rule 4-215 *de novo*. *Id.*

"A knowing and intelligent relinquishment of the benefits associated with the right to counsel requires that the defendant 'be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open.'" *State v. Camper*, 415 Md. 44, 54-55 (2010) (citing *Faretta v. California*, 422 U.S. 806, 835 (1975)). Moreover, "courts indulge every reasonable presumption against waiver" and should "not presume acquiescence in the loss of fundamental rights." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (citations and quotations omitted). "The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Id.* "To discharge this duty properly in light of the strong presumption against waiver of the constitutional right to counsel, a judge must investigate as long and

as thoroughly as the circumstances of the case before him demand." *Leonard v. State*, 302 Md. 111, 120 (1985) (quoting *Von Moltke v. Gillies*, 332 U.S. 708, 723-24 (1948)). "Thus, the judge's obligation is not just to offer the advice and instructions, but also to inquire of the defendant sufficiently to satisfy him or herself that the defendant understands them." *Richardson*, 381 Md. at 369.

That said, "[t]he Maryland Rules governing waiver of counsel recognize that a defendant may waive his right to counsel by conduct." *Leonard*, 302 Md. at 126-27; *See also* Md. Rule 4-215(d) (discussing waiver by inaction). Similarly, "the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." *Faretta*, 422 U.S. at 834 n. 46. Accordingly, in rare instances, a defendant's conduct may excuse a trial court's failure to strictly comply with the mandates of Maryland Rule 4-215. As the Court of Appeals has explained:

> [C]ircumstances may arise where the defendant is so disruptive during the trial court's attempt to advise him of the dangers and disadvantages of self-representation that the court would be justified in terminating its inquiry. In our view, these circumstances would be rare indeed. When it does occur, however, the record must be indelibly clear that the trial court made reasonable efforts to comply with [the Rule]. The defendant's disruptive and obstreperous conduct during these efforts must be of a magnitude such as effectively to thwart the court from complying with the Rule or to reduce the proceeding to a mockery. Under all the circumstances, the record must clearly reflect that the trial court made a reasonable effort to inform the defendant of his rights.

Leonard, 302 Md. at 127.

Against that backdrop, we hold that, under the unique circumstances of the instant case, the circuit court reasonably complied with both the constitutional mandates of a valid waiver inquiry and the strictures of Maryland Rule 4-215. The record here is "indelibly clear" that the court made every reasonable effort to ensure that appellant's waiver was knowing and voluntary but that appellant's behavior thwarted the court's efforts and reduced the proceeding to a mockery. On two separate occasions, once at appellant's pretrial hearing on August 24, 2018, and again on the day of his trial, the court went to great lengths and exhibited unwavering professionalism in questioning appellant to determine whether his waiver of counsel was knowing and voluntary. Unfortunately for the court, appellant met those efforts with a complete lack of willingness to engage in any meaningful conversation with the court. Without fail, and despite the court's repeated and probing inquiries into his decision to waive counsel, appellant made no effort to respond appropriately to the court's questions. Instead, appellant provided answers that were nonsensical, nonresponsive, or directly hostile. Given appellant's conduct and the trial court's patient and appropriate handling of a difficult and obstreperous party, we conclude that the court did all that was required of it, both constitutionally and under the Maryland Rules. Accordingly, the court "investigate[d] as long and as thoroughly as the circumstances of the case before [it] demand[ed]." *Leonard*, 302 Md. at 120 (citations omitted).

Remarkably, appellant's total lack of compliance did not deter the circuit court from indulging every reasonable presumption against waiver and ensuring that appellant's

waiver was knowing and voluntary. At the August 24th hearing and again at trial, the court informed appellant of the nature of the charges, the maximum penalties, the fact that he had a right to an attorney, and the benefits of having an attorney. At each hearing, the court took great pains to inquire of appellant sufficiently to satisfy the court that appellant understood the court's advice and instructions. On multiple occasions, when the court asked appellant whether he wanted to retain defense counsel or represent himself, appellant made clear that he did "not need anyone to represent [him]." *See Fowlkes v. State*, 311 Md. 586, 606 (1988) ("[T]he defendant's knowing and intelligent refusal to proceed with current able counsel has repeatedly been deemed to constitute a voluntary waiver of the right to counsel."). Finally, at the conclusion of its inquiry at the August 24th hearing, the court expressly determined that appellant had "voluntarily waived his right to counsel" and that he "wish[ed] to proceed representing himself." From those facts, we are convinced that appellant not only was made aware of the dangers and disadvantages of self-representation, but that he knew what he was doing when he waived his right to counsel and that his choice was made with eyes open.

Again, the question is not whether appellant provided the appropriate "yes" or "no" responses to the court's questions but rather whether the record clearly shows that appellant understood his decision to waive counsel and did so voluntarily. And the record here so reflects, notwithstanding appellant's deliberate refusal to respond appropriately to the court's inquiry. This is not the type of situation where the defendant provided nonresponsive or nonsensical answers to the court's inquiry because he honestly could not

or did not comprehend the court's advisements, perhaps because he did not understand English or had limited mental faculties. To the contrary, appellant, while exhibiting a clear understanding of the court's inquiry, consciously disregarded that inquiry and deliberately chose obstinance over compliance. And, in the face of that obstinance, the court still managed to create a record showing that appellant knowingly and voluntarily waived his right to counsel.

Appellant argues that the circuit court failed to comply with Maryland Rule 4-215(e) by not making a finding as to whether his request to discharge counsel was meritorious; by not considering a continuance; and by not stating on the record that his waiver was "knowing and voluntary." Appellant insists that those deficiencies mandate reversal.

We remain unpersuaded. First, a finding as to the merits of appellant's request to discharge counsel would have been pointless because appellant did not ask to discharge counsel but rather insisted that he did not need anyone to represent him. *See Dykes*, 444 Md. at 654 ("[W]hile [Rule 4-215(e)] speaks of the court 'permitting' a defendant to discharge counsel, it has no choice if the defendant chooses to exercise the right to self-representation."); *see also Pinkney*, 427 Md. at 88 (noting that, in interpreting the Maryland Rules, courts should "seek to give the rule a reasonable interpretation, not one that is illogical or incompatible with common sense.") (citations omitted). Moreover, when appellant informed the court that he had "terminated" defense counsel, the court made clear that the matter would not be postponed, which shows that the court did consider a postponement and found it to be unnecessary. *See* Md. Rule 4-215(e) ("If the court finds

that there is a meritorious reason for the defendant's request, the court shall … continue the action *if necessary*[.]") (emphasis added). Finally, although the court did not use the exact phrase "knowingly and voluntarily" when, at the August 24th hearing, it determined that appellant had "voluntarily waived his right to counsel" and "wish[ed] to proceed representing himself," we conclude that the court's announcement was sufficient to satisfy the requirements of Rule 4-215(b). *See Nalls v. State*, 437 Md. 674, 688-89 (2014) (noting that, in the context of a jury trial waiver, which has a similar "determine and announce" requirement, the trial court need not recite any "magic words" but instead may use "synonyms for or words other than 'knowingly' and 'voluntarily' that capture [those] concepts[.]").

II.

Appellant next argues, and we agree, that the circuit court erred in failing to issue a written order following his two contempt convictions. We disagree, however, with appellant's contention that the court's failure requires reversal.

Where, as here, a court summarily imposes sanctions for direct criminal contempt, the court, either before sanctions are imposed or promptly thereafter, "shall issue a written order stating that a direct contempt has been committed[.]" Md. Rule 15-203(b). The criminal contempt order must also include the evidentiary facts known to the court as to the conduct constituting contempt; the basis of the court's findings; the sanction imposed and a determinate term, if the sanction is incarceration; and how the sanction may be suspended, modified, revoked, or terminated. Md. Rule 15-203(b)(1)-(5). Ordinarily, the

omission of such a written order necessitates reversal. *Jones v. State*, 61 Md. App. 94, 102 (1984). When, however, the act of contempt is committed in the courtroom and recorded by the court reporter, and if the basis for the contempt is clear and unequivocal, the transcript of the proceedings will ordinarily satisfy the requirements of Rule 15-203(b)(1)-(5), even in the absence of a signed, written order. *Johnson v. State*, 100 Md. App. 553, 556-57 (1994). In that case, the appropriate remedy is to vacate the judgment of contempt and remand the case so that the court can issue a written order. *Thomas v. State*, 99 Md. App. 47, 56-59 (1994). In other words, "we are not required simply to reverse or vacate [] and permit appellant's conduct to go unpunished." *Id.* at 58-59 (citing *Jones*, 32 Md. App. at 498).[3] Rather, we may, in appropriate circumstances, "vacate[] the judgment and remand[] the matter to the trial court for the limited purpose of affording it an opportunity to issue the necessary order or certificate if it deems that appropriate." *Id.* at 59.

Here, the transcript established all of the requirements of Rule 15-203(b)(1)-(5). In addition, the circuit court imposed sanctions summarily, and appellant was actually incarcerated as a result. *Cf. Usiak v. State*, 413 Md. 384, 402-04 (2010) (holding that trial court erred in imposing summary sanctions approximately three months after the contempt occurred). In short, the only deficiency with regard to the court's compliance with Rule 15-203 was the lack of a written order. The appropriate remedy, therefore, is to vacate the

[3] Appellant argues that the remand in *Thomas* was "inconsistent" with the reversal requirement set forth in *Jones*. Appellant is incorrect, as this Court directly addressed *Jones* when we held, in *Thomas*, that we were not necessarily required "simply to reverse or vacate" when a trial court fails to include a written order of contempt. *Thomas*, 99 Md. App. at 56-59.

two contempt judgments and remand the matter to the circuit court for the limited purpose of affording it the opportunity to issue the necessary order.

III.

Although we have vacated appellant's two contempt convictions, we shall nevertheless address his contentions that the circuit court erred in twice finding him in contempt and in imposing separate sentences for each contempt conviction. *See Jones*, 61 Md. App. at 98-101 (reversing defendant's contempt conviction in part because the conduct at issue did not constitute direct criminal contempt); *see also Johnson*, 100 Md. App. at 560 (noting that, in some instances, a court may not impose a cumulative sentence of greater than six months for multiple contempt convictions). Regarding his two contempt convictions, appellant contends that the convictions were "overkill" given that the "two contempt findings are ten pages apart in the transcript and involve essentially the same behavior." As for his separate sentences, appellant contends that his conduct did not warrant such an "excessive penalty."

We disagree with both of appellant's contentions. Section 1-202(a) of the Courts and Judicial Proceedings Article of the Maryland Code provides that "[a] court may exercise the power to punish for contempt of court or to compel compliance with its commands in the manner prescribed by Title 15, Chapter 200 of the Maryland Rules." "A court may charge someone with direct contempt if the 'contempt was committed in the presence of the judge presiding in court or so near to the judge as to interrupt the court's proceedings.'" *Usiak*, 413 Md. at 395-96 (quoting Md. Rule 15-202(a)). The Rules also

provide that a court may summarily impose sanctions for a direct contempt if: "(1) the presiding judge has personally seen, heard, or otherwise directly perceived the conduct constituting the contempt and has personal knowledge of the identity of the person committing it, and (2) the contempt has interrupted the order of the court and interfered with the dignified conduct of the court's business." Md. Rule 15-203(a). "Criminal contempt serves a punitive function, while civil contempt is remedial or compulsory and must provide for purging." *Smith v. State*, 382 Md. 329, 338 (2004).

"The purpose of a summary conviction for direct criminal contempt is to punish immediately the contemnor for his or her behavior and vindicate the authority and dignity of the court, serving both as a specific and general deterrent." *Id.* In other words, "the purpose of the contempt power is to allow a judge to maintain the dignity and orderly operation of the court." *Id.* at 343. Thus, "as long as contempt convictions in a given case serve that purpose, it is not error necessarily for a judge to find the same individual multiple times in contempt during the course of a single, continuous proceeding." *Id.* "Nevertheless, a judge must act reasonably in finding a defendant guilty of contempt." *Johnson*, 100 Md. App. at 562.

In *Johnson v. State*, for instance, this Court held that the trial court erred when, during a heated, uninterrupted dialogue with the defendant, the court sentenced the defendant for ten acts of contempt, each of which involved, for the most part, the defendant's repeated use of profanity toward the court. *Id.* at 557-560. In so holding, we noted that, during its back-and-forth with the defendant, the trial judge made no attempt to

defuse the situation or declare a recess "to allow time for tempers to abate" and "made no effort to explain the concept of contempt or to advise the [defendant] of the seriousness of the charge." *Id.* at 562. Rather, the trial judge, in the face of the defendant's rude and improper taunts, "lost his temper and his judicial demeanor" and "may have provoked the [defendant] into repeatedly committing acts of contempt." *Id.* We concluded that, under the circumstances, the entire incident should have been considered a single episode of contempt.[4] *Id.* at 563.

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[4] We include the following excerpt of dialogue between the trial judge and the defendant in *Johnson* to illustrate the "heated" nature of the exchange:

> THE COURT: What's wrong with you?
>
> [DEFENDANT]: What the fuck you think wrong with me, man? … This is about my goddamn life.
>
> THE COURT: That cost you five months and twenty-nine days[.]
>
> [DEFENDANT]: Fuck this shit, man.
>
> THE COURT: All right. That's five months and twenty-nine more [.]
>
> [DEFENDANT]: Fuck you, bitch.
>
> THE COURT: That makes ten months plus the ten, twenty-nine days. That's twelve months. That's a year. Call me that again and I'll give you another one.
>
> [DEFENDANT]: Fuck you, bitch.
>
> THE COURT: That's five months and twenty-nine days.

Johnson, 100 Md. App. at 558.

In *Smith v. State*, by contrast, the Court of Appeals held that the trial court did not err in finding that the defendant had committed three separate acts of direct criminal contempt during the same proceeding. *Smith*, 382 Md. at 333. There, the defendant, who was representing himself at a hearing on his motion for a new trial, used profanity in front of the trial judge. *Id.* at 333-34. After being warned by the court that the use of profanity would result in a contempt finding, the defendant again used profanity and was found in contempt. *Id.* at 334. Several minutes later, the defendant used profanity again, and the court found him in contempt a second time. *Id.* The parties then continued arguing the defendant's motion for a new trial, which the court ultimately denied. *Id.* During those arguments and the court's subsequent ruling, the defendant used profanity multiple times, yet the court did not find him in contempt for those outbursts. *Id.* Finally, at the conclusion of the hearing, the court asked the defendant if he had anything he wanted to say regarding sentencing, and the defendant responded with a profanity-laced diatribe directed at the court. *Id.* at 335. The court found the defendant in contempt again. *Id.* at 335-36.

On appeal before the Court of Appeals, the defendant, citing *Johnson v. State*, argued that his "contemptuous utterances" should have been considered "as a single emotional outburst deserving of only one contempt conviction." *Id.* at 339. The Court rejected the defendant's argument and held that the trial court did not err in making three separate findings of contempt. *Id.* at 339-45. The Court explained:

> [The defendant's] attempted analogy of what occurred in his case to that occurring in *Johnson* is a misfire. First, [the defendant's] contempt convictions did not result from an extended, uninterrupted colloquy with the court; rather, they

> resulted from distinct acts, separated in time and focus by at least several minutes of unremarkable, normal discussion or exchanges arguably relevant to the purpose of the proceeding[.] … Second, unlike in *Johnson*, the judge in the present case, after warning [the defendant], after the "first bite," of the consequences of repeated conduct of the same type, did not provoke [the defendant] into further acts of contempt; instead, after each finding of contempt, the judge immediately steered from the digression back to the on-going purpose of the proceeding. Third, [the defendant] was extended great tolerance and leniency by the court regarding his verbal behavior overall: on three occasions the judge overlooked what otherwise might have been additional contempt-worthy utterances.

Id. at 341.

Here, appellant was first warned that his disruptive behavior could result in a contempt charge when, at his first trial, the trial court informed him that he "could be held in contempt" and "could be sentenced to jail" if he did not respond to the court's inquiries or do what the court directed. Despite those warnings, when appellant returned to court for the beginning of his second trial before the same judge, appellant refused to stand, refused to be quiet, and openly challenged the authority of the court. Based on that behavior, the court issued its first contempt finding and sentenced appellant to a term of five months and 29 days' imprisonment.

Nevertheless, as those proceedings continued, appellant persisted in being generally disruptive and openly defiant. Rather than hold appellant in contempt again, the court issued repeated warnings to appellant. When those warnings had no effect, the court had appellant removed from the courtroom. Approximately 26 minutes later, just before the jury was brought into the courtroom for jury selection, appellant returned to the courtroom.

Upon doing so, appellant immediately continued his disruptive behavior, which clearly interrupted the order of the court and interfered with the dignified conduct of the court's business. The court then warned appellant that his disruptive behavior would not be tolerated in front of the jury. Appellant's obstreperous behavior persisted, and the court found him in contempt a second time and sentenced him to a second term of five months and 29 days' imprisonment.

From those facts, we hold that the circuit court did not err in twice finding appellant in direct criminal contempt. *See generally Smith*, 382 Md. at 337-38 ("It is reposed in the first instance in the trial judge's sound discretion whether to hold an individual in contempt, and his or her decision generally will not be overturned on appellate review absent an abuse of that discretion or a clearly erroneous dependent finding of fact."). Appellant's contempt convictions resulted from distinct acts about which appellant had been repeatedly warned, and the two acts were separated by, at the very least, a 26-minute time span during which appellant was absent from the courtroom. Moreover, the court gave appellant considerable opportunity to correct his obviously contemptuous behavior before finding him in contempt a second time, and nothing the trial court did could remotely be considered as provocation. To the contrary, the court exhibited remarkable patience in dealing with appellant, who was nothing short of hostile and insolent for nearly the entirety of the proceedings up to the second finding of contempt. In fact, on this record, the trial court could easily have found appellant in contempt on several other occasions, yet the court showed great tolerance and leniency regarding appellant's overall behavior.

Finally, we hold that the court did not err in imposing separate sentences for each contempt conviction. "When a trial judge finds a defendant guilty of separate contempt convictions and upon each finding imposes a sentence of less than six months, there is no limit to the total sentence that may be given." *Johnson*, 100 Md. App. at 560. That is precisely what happened here, and we see no reason to disturb the court's sentence.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REGARDING APPELLANT'S CONTEMPT CONVICTIONS VACATED; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; ALL OTHER JUDGMENTS AFFIRMED; COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.