Circuit Court for Talbot County
Case No. C-20-CR-17-248

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3083

September Term, 2018

DEON TURNER

v.

STATE OF MARYLAND

Arthur,
Wells,
Gould,

JJ.

Opinion by Wells, J.

Filed: January 17, 2020

After firing his public defender appellant, Deon Turner, asked the Circuit Court for Talbot County to appoint counsel for him. It did.

After a few weeks, counsel filed a written motion to withdraw his representation citing Turner's lack of cooperation in communicating with counsel and not appearing for court. After a hearing, the court granted counsel's request, allowed counsel to withdraw, and declined to appoint another attorney for Turner.

After a bench trial, in which Turner represented himself, the court convicted Turner of: Count 1 (possession with intent to distribute oxycodone); Count 2 (possession of oxycodone); Count 3 (possession of oxycodone without a prescription with intent to distribute); and Counts 4 and 5 (possession of different kinds of drug paraphernalia). The court sentenced Turner to six years' incarceration on Count 1 and three concurrent 110-day sentences on Counts 2, 4, and 5. Count 3 merged at sentencing.

Turner filed a timely appeal and poses the following question, which we reproduce verbatim:

> Did the trial court improperly deny Appellant his right to counsel by erroneously granting defense counsel's motion to strike his appearance and not appointing new counsel and implicitly find that Appellant had waived his right to counsel by his conduct in failing to appear for scheduled court proceedings?

We answer no and affirm the convictions.

FACTUAL AND PROCEDURAL BACKGROUND

After he was arrested on October 3, 2017 and charged with a string of drug-related offenses, chief among which was possession with intent to distribute oxycontin, Turner sought and received representation from the Office of the Public Defender ("OPD") in the person of Christine Dufour. Dufour entered her appearance on Turner's behalf on November 9, 2017.

A. The Pretrial Conference of February 2, 2018

Dufour and Turner were both present at a pretrial conference on February 2, 2018. At the pretrial conference, Turner expressed dissatisfaction with Dufour.

> THE DEFENDANT: Your Honor, I mean I'm trying to get, I want to get some towards her (sic). I've been trying to communicate with the lady, to call me or do anything. She hasn't set a strategy up or nothing and it's starting to get on my nerves so how can we have a trial date if she hasn't really communicated nothing to me?

T 2/2/18. 4.[1] Dufour replied that she had represented Turner since his case had been filed in the District Court. In response to his question, she explained that Turner wanted her to file a motion to dismiss and she explained that it would be futile to do so once his case had been transferred to the circuit court. Dufour also said that she had given Turner her cell phone number and she had tried to call him but received an automated reply from Turner's service provider stating that the phone could not take messages because the "mailbox [was]

[1] Excerpts of the proceedings are reproduced using the following system: **T(ranscript) (date). (page number)**. [justified and fixed font size of footnote number].

full." Dufour acknowledged that she did not call back Turner quickly. In any event, Dufour said that she was "happy" to represent Turner.

Immediately afterward, the following dialogue took place between the court and Turner:

> THE COURT: Well Mr. Turner, this is the way it goes. Ms. Dufour will be your attorney unless you decide to fire her. If you decide to fire her then you will no longer have the use, the services of the Office of the Public Defender which leave you two options. You can hire private counsel or you can apply to the court for the Court to appoint you counsel if you're indigent and unable to afford counsel and the Court will have to decide what to do. But if you do not wish, if you do not wish to pay for private counsel because I'm going to have to find out why you fired the Public Defender and won't pay for private counsel before I appoint you counsel. You understand that?
>
> THE DEFENDANT: Yes, sir, I understand.
>
> THE COURT: So if you decide to fire Ms. Dufour then you have two options but until you fire Ms. Dufour she is ethically bound...
>
> THE DEFENDANT: I understand (inaudible).
>
> THE COURT: To represent you. You understand that?
>
> THE DEFENDANT: I understand it totally.

T(2/22/18). 5.

B. <u>The Pretrial Conference of February 16, 2018</u>

Turner and a different public defender, Tamara Stofa, were present on February 16, 2018 at a follow-up pretrial conference.[2] Again, Turner expressed dissatisfaction with Dufour's representation, saying, "She keeps brushing me off[.] [I]t's always like a family emergency. To me she doesn't want to spend no time on the case." **T(2/16/18). 3**. Stofa

[2] According to Stofa, Dufour had "a family emergency" and could not be present in court with Turner. **T(2/16/18). 3**.

said that Turner did not attend a meeting that Dufour had scheduled with him. ***Id***. Stofa reported that after both she and Dufour tried to call Turner, Dufour finally contacted him. ***Id***. After hearing this, the court and Turner engaged in this dialogue:

> THE COURT: Okay, Mr. Turner. Is it your desire to discharge the Office of the Public Defender from representing you?
>
> THE DEFENDANT: Yes, I need a, I'm asking I guess for a Court appointed attorney in the matter.
>
> THE COURT: Well can you afford a private attorney?
>
> THE DEFENDANT: Nope. And I'm not going to keep going to them and they not going to like address the issues of the case.

T(2/16/18). 4. The court then conducted an examination of Turner pursuant to Md. Rule 4-215 to determine if he knowingly wished to discharge the OPD. The court also inquired whether Turner wanted the court to appoint counsel for him. During its questioning, the court discussed the charges Turner was facing, including the maximum penalties. The court then asked Turner:

> THE COURT: And do you understand if I, the Court appoints an attorney for you and you do not get along with that attorney that's going to be it. I'm not going to sit and go through the entire bar association before you're happy with an attorney?
>
> THE DEFENDANT: I understand that point, Your Honor.
>
> THE COURT: Okay. You understand if you are not happy with your new, if the Court appoints an attorney for you and you're not happy with that new attorney you may end up having to represent yourself at trial?
>
> THE DEFENDANT: Yes.
>
> THE COURT: You understand if you represent yourself at trial you're going to be held to the same standards as an attorney...

THE DEFENDANT: Yes.

THE COURT: With regard to the understanding of the rules of evidence and the rules of procedure?

THE DEFENDANT: Yes.

THE COURT: And is understanding these things is it your desire to discharge the Office of the Public Defender?

THE DEFENDANT: Yes.

THE COURT: All right. And the Office of the Public Defender is discharged in case C-20-CR-17-248 so your appearance is.

DEFENSE COUNSEL: Your Honor, for the record I'm providing Mr. Turner with a copy of the discovery.

T(2/16/18). 7-8.

C. <u>The Hearing of March 2, 2018</u>

After the February 16th court hearing, two things happened. *First*, the court tapped Philip Cronan to be Turner's court-appointed counsel. On February 26, 2018, Cronan filed a Line in which he advised the court that Turner had failed to return his phone calls and did not keep an appointment with him. Cronan further advised the court that he was able to contact Turner's father, who relayed a message to Turner that Cronan wished to speak with him.

Second, the court converted the March 1, 2018 trial date into a status conference. Although the court sent notice of the change to Turner at the address he provided, he did not appear in court on March 1, 2018. As a result, the court issued a bench warrant. Turner

was arrested, but he posted bond and appeared in court the next day, March 2, 2018. At that time, this discussion occurred during the proceedings:

> THE COURT: You should have been here, you know, what went on is I converted your trial date where you should have been here to a status conference because you can't get an attorney. But here's what you're going to do about getting an attorney. Mr. Cronan is available to meet with you on Tuesday, March 27, 2018 at 1:30 p.m. You are to go there and if you do not meet with Mr. Cronan at that day and time. And if you do not meet with him you will not have an attorney in this case.
>
> THE DEFENDANT: Yeah, I understand. I understand.
>
> THE COURT: If Mr. Cronan after meeting with you is unable to represent you we will cross that bridge when we get to it. You understand?
>
> THE DEFENDANT: Yes.
>
> THE COURT: I'm going to withdraw the Bench warrant and we will schedule this for another status when we hear back from Mr. Cronan, Mr. State's Attorney, to see whether Mr. Cronan is representing him.

T(3/2/18). 4-5.

Cronan subsequently filed a Line of Appearance on April 4, 2018. Afterward, Cronan represented Turner at a June 29, 2018 suppression hearing. The court denied Turner's motion to suppress on July 13, 2018.

On July 20, 2018, Turner did not appear in court for a hearing and the court issued a bench warrant. Turner was apprehended three days later and requested a bail hearing. The next day, July 24, 2018, Cronan sent the court a motion to withdraw as Turner's attorney. In his motion, Cronan wrote that he could no longer represent Turner because of "his failure to fulfill a substantial duty to the court and…counsel by appearing (sic)[3] at a

[3] Logically, the text should read, "… counsel by **not** appearing at a hearing as scheduled."

hearing as scheduled." Cronan concluded that Turner's "conduct … renders representation unreasonably difficult and has brought about an irreparable breakdown of the attorney/client relationship."

D. The Hearing of July 27, 2018

Turner and Cronan appeared at what was scheduled to be a plea hearing on July 27, 2018. At that hearing, Turner changed his mind and did not enter a guilty plea, but, instead waived his right to a jury trial. Also, the court addressed Cronan's request to withdraw.

> THE COURT: All right. Mr. Turner I'm advised that there may not be or will not be a plea this morning. You are advised that you have a trial set for August the 27th, a jury trial?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Set for August the 27th. Mr. Cronan is representing you at the present time. There is a petition by Mr. Cronan to remove himself as counsel for you to have him dismissed as his lawyer. Are you familiar with that?
>
> THE DEFENDANT: Yes, I received that yesterday in the mail at the jail.
>
> THE COURT: And I will tell you that there is a strong likelihood that he will be dismissed as your lawyer in order to give you time to get a lawyer before your trial on August the 27th. It is my understanding that there is really nothing we can do today other than for me to advise you that you have a right to be represented by an attorney. Am I misconstruing?

T(7/27/18). 7. The judge was correct. Cronan wanted to withdraw his representation, but Turner also wanted to waive his right to a jury trial. The court first conducted an examination of Turner and found that he knowingly and voluntarily waived his right to be tried by a jury. After an extensive voir dire, the court said:

> THE COURT: I find that Deon Arnell Turner fully understands what a jury trial is. He understands his right to a jury trial. And he is freely and voluntarily and knowingly waiving his right to a jury trial this morning. And I'm going to accept that waiver. That means this case will be set in for a judge trial on August the 27th. Now I'd like to turn the issue of Mr. Cronan. Mr. Cronan has filed a petition to remove him or have his appearance stricken. Mr. Cronan is here today because the judge did not grant his motion to strike. I believe that the judge felt that there should be time for you to get a notice from him and for you to consider whether you wish to have him continue or not as your lawyer. You understand that?
>
> THE DEFENDANT: Yeah, the judge told me when he appointed Mr. Cronan that he wasn't going to go through the whole...
>
> MR. CRONAN: Bar association.
>
> THE DEFENDANT: Bar association. It's, it's, I don't think, you think I'm just being, I mean, I don't know why he was hoping to strike hisself (sic).
>
> THE COURT: Well here's what I want you to understand, that if Mr. Cronan's appearance is stricken you're going to have to find another lawyer.
>
> THE DEFENDANT: But I don't got no, I don't got no...
>
> THE COURT: Let me finish.
>
> THE DEFENDANT: All right.
>
> THE COURT: You're going to have to have a lawyer before you come to court on August the 27th. You understand that?
>
> THE DEFENDANT: Yeah, I understand that.

T(7/27/18). 21-22. Although Turner made it clear that he wanted an attorney, the court reminded him that Cronan did not believe that he could represent him.

> THE DEFENDANT: I'm not trying to like proceed without a lawyer. That's what I'm getting at. That's the process that I'm not possibly understanding. You following what I'm saying?
>
> THE COURT: I'm following what you're saying.

****

> THE COURT: Well whether he is going to be your lawyer on the 27th of August or not I don't know that's up to you and him. He is seeking to be removed as your lawyer and it is likely that if he has given you sufficient notice the judge will sign an order removing him as your lawyer. Which means you'll have to get a lawyer before you come back here on August the 27th. Do you understand that?
>
> THE DEFENDANT: Yeah, but I, I'm still not understanding the process, your Honor.

***Id.* at 22-23**. Before the court ruled on Cronan's motion to withdraw, the court asked Turner to decide if he wanted to enter a guilty plea and whether Cronan would stay on as Turner's attorney.

> THE COURT: Okay. So I'm going to give you until next Wednesday to decide with Mr. Cronan whether you want to enter a plea in this case. If you don't it will be set in for a jury trial, I'm sorry a Bench trial on August the 27th. Okay?
>
> THE DEFENDANT: All right.
>
> THE COURT: Next Wednesday is August the 1st. So you and Mr. Cronan talk to each other about what you want to do between then and...

***Id.* at 25**.

E. The Hearing of August 17, 2018

Cronan refiled his motion to withdraw on August 6, 2018, citing exactly the same grounds that led him to file in July, namely, that Turner failed to call him and missed court dates. Eleven days later, on August 17, the court convened a hearing on the motion. At the hearing, the court asked Turner his thoughts on Cronan's request to withdraw. Without reproducing the entire dialogue between Turner and the court, it is enough to say that

Turner disagreed with both Cronan and the court, arguing that he had not intentionally missed two court appearances, but that he "got the days mixed up." **T(8/17/19). 6**. Turner also claimed that it was Cronan who did not return his calls, which was the opposite of what Cronan claimed. **T(8/17/19). 6, 8**. After further discussion, the court granted Cronan's motion. The following exchange took place at the end of the hearing:

> THE COURT: All right, Mr. Cronan, I will grant your motion. And Madam Clerk you please issue a subpoena to be served on Mr. Turner to require his presence at trial on...
>
> THE DEFENDANT: Your Honor, I don't want to go to trial without an attorney so I don't know...
>
> THE COURT: Mr. Turner, we've been through this.
>
> THE DEFENDANT: It is what it is. I'm just restating it for the record.
>
> THE COURT: It is what it is because you have consistently...
>
> THE DEFENDANT: Because you keep believing them, that's the point.
>
> THE COURT: Don't interrupt me. You have consistently ignored what your attorney's have had to say. You ignored Mr. Cronan's telling you to be in court. You've ignored everything, all of your attorneys have had to say, and I'm not going to put Mr. Cronan in the professionally untenable position of showing up for trial and having to look me in the face and say, I kept telling my attorney (sic) to be here on August 27th and he's not here. You think it's a joke.
>
> THE DEFENDANT: No, I don't think it's a joke....
>
> * * *
>
> MR. CRONAN: Thank you, Your Honor.
>
> THE DEFENDANT: That's it.
>
> THE COURT: We will see you on August 27th, Mr. Turner.

T(8/17/18). 9-11.

F. <u>The Trial of August 27, 2018 and the December 14, 2018 Sentencing</u>

The bench trial went forward as scheduled on August 27, 2018. Turner represented himself. Two police officers testified for the State. The first officer testified that Turner was driving a car when the officer stopped him for a minor traffic violation. The officer's suspicions were raised when Turner gave inconsistent answers to questions about where he had been and what he was doing. The officer called for a drug dog who, shortly after arrival, signaled that illegal substances might be in Turner's vehicle. A search of the vehicle revealed a digital scale, Ziploc baggies, and two cell phones. A subsequent search of Turner revealed 55 ten (10) milligram oxycodone pills secreted near Turner's groin.

A second police officer testified as an expert in the fields of narcotics investigation and detection. That officer testified that the quantity of pills, where they were found, the presence of a scale and small baggies, as well as the "street value" of the pills—$550—led him to opine that Turner possessed the oxycodone with the intent to distribute it.

Turner asserted his Fifth Amendment right against self-incrimination and elected not to testify. He produced no witnesses or evidence.

At the end of the trial the court found Turner guilty of possession with intent to distribute oxycodone, simple possession of the same drug, possession with intent to distribute oxycodone without a valid prescription, and two counts of possession of drug paraphernalia.

On December 14, 2018, the court sentenced Turner to six years' incarceration for possession with intent to distribute oxycodone. In addition, the court meted out three

concurrent 110-day sentences for simple possession and the two paraphernalia counts. The prescription-related offense merged at sentencing. Turner filed this appeal.

DISCUSSION

A. Turner's Contentions

Before this Court, Turner asserts that the circuit court denied him his Sixth Amendment right to counsel when it allowed Cronan to withdraw but did not appoint another attorney. Appellant's Brief at 10. In his motion to withdraw, Cronan claimed that because Turner had failed to come to court or return phone calls, Cronan could no longer represent him. As Turner sees it, the court erred when it did not inform him that he would forfeit his right to counsel if he failed to appear for court hearings. *Id*.

Turner acknowledges that a defendant may expressly waive the right to counsel, provided the court follows the requirements of Md. Rule 4-215(a) and (b). Further, Turner acknowledges that a defendant may waive their right to counsel by inaction. Md. Rule 4-215(d). Turner also notes that when a defendant's conduct is egregious, a court may find that the defendant has waived the right to counsel, provided the court has advised the defendant of the consequences of his misbehavior. Turner claims, however, that his conduct did not excuse the court from the mandatory provisions of Rule 4-215 before finding waiver. *See Gutloff v. State*, 207 Md. App. 176 (2012).

Turner also argues that the "court abused its discretion in granting Cronan's motion to withdraw under Rule 4-214." Appellant's Brief at 18. Turner notes that Cronan cited Turner's failure to appear for court proceedings and Turner's disregard of counsel's phone

calls had made representing Turner "unreasonably difficult," leading to an "irreparable breakdown in the attorney/client relationship." Appellant's Brief at 18. Turner disagrees with the court's reasoning for discharging Cronan, arguing that the court was factually incorrect in saying that Turner "only showed up for court voluntarily twice without a warrant being issued." *Id*. And the court incorrectly found that Turner's relationship with Cronan was "irretrievably broken." *Id*. at 19. Turner maintains that in discharging Cronan the court prejudiced Turner by forcing him into a "Hobson's Choice" between the right to counsel and the right to a jury trial, as Cronan told the court that he would represent Turner if he entered a guilty plea but would not continue as his attorney if he went to trial. *Id*. at 20. Finally, Turner asserts that if the court was concerned that he would not appear for trial it could have tried him in absentia if he failed to appear, *id*. at 21-22, or simply denied him bail, ensuring his appearance. *Id*. at 22-23.

B. State's Contentions

The State disagrees with how Turner frames the issues. In the State's view, the question is not whether the court erred because it did not warn Turner that his failure to appear for court proceedings would constitute waiver of counsel. Appellee's Brief at 20. Rather, the State notes that the court warned Turner that if he did not cooperate with Cronan, the court would not appoint new counsel and Turner would have to seek private counsel or represent himself. *Id*. When Turner appeared for trial without an attorney, did not seek a postponement to obtain counsel, or ask the court to appoint an attorney for him, in the State's view, this was the "culmination of his pattern of dilatory conduct after receiving appropriate warnings." *Id*. at 21.

The State argues that the court "soundly exercised its discretion in granting Cronan's motion" pursuant to Rule 4-214(d). *Id*. at 22. As the State sees it, Cronan's motion to withdraw listed three reasons why he could no longer effectively represent Turner: (1) Turner's history for failing to appear for court, (2) failing to tell Cronan that he would not appear on June [July] 20, 2018, and (3) failing to return Cronan's phone calls. *Id*. at 23. The State maintains that Rule 4-214(d) does not state what level of "conflict" between counsel and client will justify withdrawal, but, rather, the rule contemplates that the court assess the overall effectiveness of the attorney-client relationship. In this case, the State, citing Md. Rule 19-301.16, argues that the court properly found Cronan's relationship with Turner was beyond repair, thus the court was justified in granting Cronan's motion to withdraw. Appellee's Brief at 23-26.

Finally, the State takes issue with Turner's assertion that the court based its ruling on erroneous facts. *First*, while the State concedes that the court misspoke when it stated that Turner had only appeared voluntarily for two (2) court proceedings, the State maintains that the real issue isn't a tally of missed court appearances, but rather, Turner's level of cooperation with counsel. *Id*. at 26. *Second*, while Turner claims that from his perspective his relationship with Cronan had not broken down, the State argues that Turner's actions did not reveal a desire to "get along" with his court-appointed attorney by changing his behavior. *Id*. at 27. *Third*, while Turner acknowledges that Rule 4-215(d) contemplates that a court may refuse to discharge counsel if doing so would result in prejudice to one of the parties, *id*., to the extent prejudice existed, in the State's estimation, it was a

consequence about which Turner had been repeatedly warned. *Id.* at 28. *Further*, the State asserts that while waiver by conduct always carries with it the possibility of prejudice, here, the court afforded Turner reasonable time to obtain counsel before trial. *Finally*, the State dismisses as unrealistic Turner's assertion that the court could have avoided prejudicing him by trying him in absentia if he failed to appear or revoking his bail to ensure his appearance in court. *Id*. at 30-31.

C. Analysis

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights both guarantee the right to counsel. See Gideon v. Wainwright, 372 U.S. 335, 342-43 (1963); accord Brye v. State, 410 Md. 623, 634 (2009)[4]. "If the defendant cannot afford private representation, then he or she is entitled to an effective defense from a public defender or court appointed attorney." Gonzales v. State, 408 Md. 515, 529-30 (2009); see also Dykes v. State, 444 Md. 642, 648 (2015) ("[T]he defendant has a right to counsel appointed at government expense" (citing Gideon, supra)). "If the defendant can afford private representation, however, then the defendant has a right to the attorney of his or her choice." Gonzales, 408 Md. at 530 (emphasis added).

A defendant in a criminal prosecution has a constitutional right to effective assistance of counsel as well as the corresponding right to reject that assistance and represent himself. Powell v. Alabama, 287 U.S. 45, 71 (1932) (recognition of the

[4] The right to counsel provisions of the Maryland Declaration of Rights, Article 21 are in harmony with the Sixth Amendment to the federal constitution. *Parren v. State*, 309 Md. 260, 262-3 n.1 (1987).

constitutional right to the effective assistance of counsel); Dykes, 444 Md. at 648 (same); see also Gregg v. State, 377 Md. 515, 548 (2003) (stating that the right "grants the accused not only the right to be represented by counsel, but also the right to make his [or her] own defense without the assistance of counsel") (citing Faretta v. California, 422 U.S. 806, 819 (1975)).

When a criminal defendant seeks to forgo the assistance of counsel, a waiver of that right must be knowing and intelligent to be effective. See Brye, 410 Md. at 634-35 ("The accused 'should 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."'") (quoting Faretta, 422 U.S. at 835); see also Dykes, 444 Md. at 648 ("A defendant may waive the right to counsel if the defendant does so knowingly and voluntarily"); Gonzales, 408 Md. at 530 ("a defendant who wishes to assert the right to self-representation must knowingly and intelligently waive his or her right to an attorney"). But, "courts indulge every reasonable presumption against its waiver." Dykes, 444 Md. at 648 (quoting Parren, 309 Md. at 263).

To safeguard the right to counsel, the Court of Appeals adopted Maryland Rule 4-215, "which explicates the method by which the right to counsel may be waived by those defendants wishing to represent themselves . . . ." Broadwater v. State, 401 Md. 175, 180 (2007); accord Dykes, 444 Md. at 651. The rule "provides an orderly procedure to ensure that each criminal defendant appearing before the court be represented by counsel, or, if he is not, that he be advised of the Sixth Amendment constitutional right to the assistance of counsel, as well as his correlative constitutional right to self-representation." Broadwater,

401 Md. at 180-81 (citation omitted). The requirements of the rule are "mandatory," require "strict compliance," and "a trial court's departure from the requirements of Rule 4-215 constitutes reversible error." Pinkney v. State, 427 Md. 77, 87-88 (2012) (citations omitted).

Further, the rule "is a bright line rule that requires strict compliance in order for there to be a 'knowing and intelligent' waiver of counsel by a defendant." Johnson v. State, 355 Md. 420, 452 (1999); see also Gonzales, 408 Md. at 530 ("Maryland Rule 4-215 ensures that a defendant's waiver of the right to counsel is knowing and voluntary by setting forth mandatory procedures that a trial court in this State must follow when a defendant seeks to assert this right"); Broadwater, 401 Md. at 182 ("Strict, not substantial compliance with the advisement and inquiry terms of the rule is required in order to support a valid waiver"); Gregg, 377 Md. at 554 ("the trial court must comply with Rule 4-215 in order for defendant's waiver of counsel to be effective").

Our review of the circuit court's compliance with Rule 4 215 is de novo. State v. Graves, 447 Md. 230, 240 (2016). And, where the court has strictly complied with the rule, we review the court's decision regarding whether to grant or deny a defendant's request to discharge counsel for abuse of discretion. State v. Taylor, 431 Md. 615, 630 (2013).

Turner had two successive attorneys, public defender Christine Dufour, and court-appointed counsel, Philip Cronan. From what we discern from the arguments presented in his brief, Turner does not dispute that the court properly adhered to the requirements of Rule 4-215 in discharging Dufour.

Instead, Turner's assignment of error rests on two premises: *First*, that the court abused its discretion in improperly releasing Cronan as Turner's counsel based on the court's erroneous factual findings at the hearing; *second*, according to Turner, the court compounded the first error by failing to advise him that it would not appoint new counsel for him *if he failed to appear for court proceedings*. In Turner's estimation, because the judge who heard Cronan's motion to withdraw was the same judge who presided at Turner's last bail hearing, the judge knew it was "reasonably likely" that Turner would not appear for trial. [at 23]. Thus, Turner argues, the only means by which he could be deemed to have "waived his right to counsel by conduct [pursuant to Rule 4-125] was his failure to appear at two court proceedings thereby ignoring the instructions of his counsel."

1. <u>The Circuit Court had Reasonable Grounds to Discharge Cronan</u>

We start with Turner's first assertion, that the trial court improperly allowed Cronan to withdraw as Turner's counsel. Maryland Rule 4-214(d) provides:

> A motion to withdraw the appearance of counsel shall be made in writing or in the presence of the defendant in open court. If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion. If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving counsel. If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted only by order of court. The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215.

Our research found a dearth of Maryland cases that discuss the degree to which counsel and client's relationship must deteriorate to merit counsel's request to withdraw from

representation. In his brief, Turner cites *Simms v. State*, 445 Md. 163 (2015) and *Carter v. State*, 173 Md. App. 1216 (2007) for cases that discuss striking counsel's appearance pursuant to Rule 4-214. *Simms* holds that, generally, the standard of review for evaluating a court's decision to grant or deny withdrawal of counsel is abuse of discretion.[5] 445 Md. at 180. A circuit court's decision to grant a motion to withdraw is reviewed under an abuse of discretion standard. *Serio v. Baystate Properties, LLC*, 209 Md. App. 545, 554 (2013). "An abuse of discretion occurs 'where no reasonable person would take the view adopted by the court' or if the court acts 'without reference to any guiding rules or principles.'" *Id.* (quoting *North v. North*, 102 Md. App. 1, 13 (1994)). Neither *Simms* nor *Carter* discuss what constitutes sufficient grounds for a court to grant counsel's request to withdraw, however.

We turn to Maryland Attorney's Rules of Professional Conduct ("MARPC") 19-301.16(b) which provides:

> Except as stated in section (c) of this Rule, an attorney may withdraw from representing a client if:
>
> (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
>
> (2) the client persists in a course of action involving the attorney's services that the attorney reasonably believes is criminal or fraudulent;
>
> (3) the client has used the attorney's services to perpetrate a crime or fraud;

[5] We say "generally" because even though the Court of Appeals referenced Rule 4-215 in this post-conviction proceeding, the Court held that Md. Rule 2-132, which governs an attorney's motion to withdraw in a civil case, is "a better fit" under the circumstances presented. 445 Md. at 180.

> (4) the client insists upon action or inaction that the attorney considers repugnant or with which the attorney has a fundamental disagreement;
>
> (5) the client fails substantially to fulfill an obligation to the attorney regarding the attorney's services and has been given reasonable warning that the attorney will withdraw unless the obligation is fulfilled;
>
> (6) the representation will result in an unreasonable financial burden on the attorney or has been rendered unreasonably difficult by the client; or
>
> (7) other good cause for withdrawal exists.

Many cases cite this rule as authority when attorney discipline is at issue. For example, in *Attorney Grievance Commission of Maryland v. Ambe*, 466 Md. 270 (2019), the Court of Appeals held that counsel committed sanctionable conduct by failing to file a motion to withdraw his appearance before the Board of Immigration Appeals after a client terminated the relationship. *Id*. at 8. "MARPC 19-301.16(d) mandates that the attorney 'take steps to the extent reasonably practicable to protect a client's interests.' MARPC 19-301.16(d) is violated when an attorney fails to return unearned fees and papers. *Attorney Grievance Comm'n v. Moore*, 447 Md. 253, 269 (2016);" *Id.* at 294; *accord Attorney Grievance Comm'n v. Steinberg*, 395 Md. 337, 365 (2006).

But we have found no Maryland authority that speaks to the grounds upon which an attorney may end representation of a client. We shall therefore review the record to determine whether the court's decision was one "'where no reasonable person would take the view adopted by the court' or if the court acts 'without reference to any guiding rules or principles,'" when it permitted Cronan to withdraw as Turner's counsel. *Simms*, 445 Md. at 180.

In this case, Cronan filed two separate written motions to withdraw, one on July 20, 2018 and another on August 6, 2018. Both motions stated the same grounds upon which Cronan sought to end representation: (1) Without prior notice to Cronan, Turner failed to appear for a pre-trial conference on July 20, 2018 after being "provided written notice"; (2) Turner had previously failed to appear for a status conference on March 1, 2018 and the court issued a bench warrant; and (3) Cronan made "unsuccessful attempt[s] to contact Mr. Turner."

On August 17, 2018, after hearing from Cronan and Turner on the motion to withdraw, the court granted the motion saying:

> THE COURT: Don't interrupt me. You have consistently ignored what your attorney's (sic) have had to say. You ignored Mr. Cronan's telling you to be in court. You've ignored everything, all of your attorneys have had to say, and I'm not going to put Mr. Cronan in the professionally untenable position of showing up for trial and having to look me in the face and say, I kept telling my attorney (sic) to be here on August 27th and he's not here. You think it's a joke.
>
> * * *
>
> THE COURT: . . . Mr. Cronan has done everything to secure your presence and this is only the second time in this case which has been going on since …
>
> THE DEFENDANT: Since October 3, 2017.
>
> THE COURT: Since October 3, 2017 that you've actually showed up voluntarily for court without a warrant being issued. So I'm granting Mr. Cronan's motion to withdraw.

Turner maintains the quoted passages form an insufficient basis upon which the court should have granted the motion. The State asserts that, apart from what was quoted, the

court had reasonable grounds to find that the relationship between Cronan and Turner was irretrievably broken. We agree with the State and explain.

a. Turner's Attorneys Had Difficulty Contacting Him

When he was represented by the OPD, the two public defenders, Dufour and Stofa, told the court that they had difficulty maintaining contact with Turner, despite the fact that Dufour gave Turner her cell phone number. Dufour said that she tried to call Turner but could not reach him because his phone's mailbox was full, seeming to indicate that Turner had amassed several unanswered phone calls. Both attorneys resorted to leaving messages with Turner's father to get Turner to call them.

The same problem surfaced when Cronan represented Turner. Ten days after being appointed Turner's counsel, February 26, 2018, Cronan sent a Line to the court which we re-print verbatim:

> LINE
>
> Philip Cronan and Hollis, Cronan & Fronk, P.A., files this Line and states that undersigned counsel attempted to contact Defendant on February 21, 2018, at approximately 11:55 a.m. Undersigned counsel left a message with Defendant's father, Jacob Turner, requesting that Defendant contact undersigned counsel to schedule an appointment. Undersigned counsel held February 23, 2018, at 11:00 a.m. open on his calendar for Defendant.
>
> Undersigned counsel attempted to contact Defendant on February 26, 2018, at approximately 9:00 a.m., and spoke with Mr. Jacob Turner who verified that he delivered the previous message to Defendant.
>
> At the time of filing this Line, Defendant has not contacted undersigned counsel.

While Cronan went on to represent Turner at a bail hearing, a motion to suppress, and the aborted plea hearing that turned into a waiver of a jury trial, Cronan later filed motions to withdraw his appearance on July 24, 2018 and August 6, 2018. In both motions, Cronan stated that he was unsuccessful in contacting Turner to find out why he did not attend the July 20, 2018 pre-trial conference. It is also worth noting that Turner mentioned at the August 17th [deleted superscript] hearing that Cronan had to use Turner's father as a means of staying in contact with him. "Now when he sent the letter to my dad's house I got the letter."

b. Turner Failed to Meet with Counsel and to Appear for Court

At the February 16, 2018 status conference, public defender Stofa noted that Turner failed to appear for a meeting with Dufour. In his February 26, 2018 Line, Cronan complained that Turner did not keep an appointment with him. We have discussed that Turner failed to appear for two court appearances—March 1, 2018 and July 20, 2018—both times the court issued a bench warrant for Turner.

In our view then, the court was correct in finding that Turner exhibited a pattern of behavior that made representing him difficult. "You have consistently ignored what your attorney's (sic) have had to say. You ignored Mr. Cronan's telling you to be in court. You've ignored everything, all of your attorneys have had to say …." We conclude that the circuit court had sufficient bases to find that Turner's behavior—failure to appear for meetings with counsel, failure to appear for court, and failure to provide a viable and consistent means to stay in contact with his counsel—led to what Cronan termed an

"irreparable breakdown" in the attorney-client relationship. Equally important, Turner did not give the court (or counsel) the slightest indication that he was willing to change his behavior. Indeed, as demonstrated in the excerpts from the various hearings, Turner blamed counsel rather than himself for failing to stay in contact. We conclude that these facts formed an adequate basis for the court to discharge Cronan as Turner's counsel.

2. The Court Warned Turner of the Consequences if His Court-Appointed Counsel Were Discharged

Turner next argues that the court erred in not warning him that if he failed to appear for scheduled court proceedings, he would, in effect, be waiving his right to counsel. Turner's argument is predicated on the theory of waiver by conduct. Turner maintains his analysis of Gutloff, as well as precedent from other jurisdictions, specifically the Indiana case, Boesel v. State, 596 N.E.2d 640 (Ind. App. 1992), support his position. The State on the other hand, argues that Turner knew the consequences of his failure to cooperate or, as the court put it, "get along" with his court-appointed attorney, because the court had warned him that the court would not be appointing new counsel for him if it discharged Cronan.

Gutloff was charged with simple possession of marijuana found after a search conducted during a routine traffic stop. 207 Md. App. at 178. Although the case began in the District Court, Gutloff requested a jury trial and the case was transferred the same day to the circuit court for trial. Id. at 185. In the circuit court, Gutloff repeatedly raised a series of non-meritorious jurisdictional challenges and other claims. Id. at 185-187. Nevertheless, the circuit court proceeded with jury selection, in which Gutloff participated

while acting as his own counsel. Id. at 188-89. The jury ultimately convicted Gutloff. Id. at 178.

Gutloff challenged his conviction asserting that the circuit court did not comply with Md. Rule 4-215. Id. at 192. The State agreed that the court failed to follow the requirements of Rule 4-215, but Gutloff's behavior was so disruptive that it made it impossible for the court to have followed Rule 4-215's "precise rubric." Id. at 193. After reviewing federal cases and precedent from our sister states, we noted that other jurisdictions have held that serious misconduct by a defendant, namely threats of bodily harm, death, or lawsuits made toward their counsel, could be egregious enough to constitute forfeiture of the right to counsel. Id. at 195-204.

In undertaking our analysis of the cases, we found a distinction between forfeiture of the right to counsel, which did not require a court-issued warning that improper behavior might lead to the forfeiture of counsel, and waiver, which required the court warn a defendant that misbehavior could result in the loss of counsel. Id. at 205. We held that while Gutloff's conduct was boorish and argumentative, it did not involve a risk of harm to others and the judge remained in control of the courtroom. Id. at 204. Consequently, we held that the circuit court was not excused from compliance with Rule 4-215's waiver provisions. Id. at 205.

The trial court appointed counsel to represent Boesel at his trial for arson. 596 N.E. 2d at 262. Counsel had moved to withdraw prior to trial, claiming that Boesel "failed to keep appointments and prepare" for trial, but the court denied the request. Id. Boesel did

not appear for the scheduled trial. Id. Counsel, who was present, asked for a postponement, which the court denied. Although the court issued an arrest warrant for Boesel, it proceeded with the trial. Id. Counsel twice more asked to withdraw and on the third occasion, after jury selection, the court granted counsel's request. Id. Boesel was tried in abstentia and without counsel and was convicted. Id.

Citing the "dispositive" Indiana precedent of Carr v. State, 591 N.E. 2d 640 (Ind. App., 1992), which "held that a defendant does not waive his right to counsel by failing to appear at trial," the Indiana intermediate appellate court concluded that the trial court abused its discretion in allowing Boesel's counsel to withdraw during a trial in which he was tried in abstentia. 596 N.E. 2d at 262-63. "Although we understand the trial court's frustration with Boesel's apparent lack of cooperation with appointed counsel . . . and it may be possible that Thom's withdrawal was permitted under [our waiver of counsel statute] we cannot say either that the mere failure to appear for trial in this case amounts to a knowing waiver of the right to counsel, or that a failure to communicate with appointed counsel is equivalent to an implied waiver of the right to counsel." Id. at 263.

In our estimation, the facts in Gutloff and Boesel have little application in Turner's case. Unlike the defendant in Boesel, Turner was present for trial. Further, counsel was not excused mid-trial as in Boesel. More to Turner's point, we cannot adopt through Boesel an interpretation of Rule 4-215 which would require a court to warn a criminal defendant that their failure to appear for court proceedings would risk waiver of the right to counsel. Neither the rule nor Maryland precedent require such a warning.

Unlike Gutloff's hectoring insistence that the court lacked jurisdiction over him, 207 Md. App. at 185-87, we do not conclude that the trial court failed to adhere to the requirements of Rule 4-215. As we see it, the issue here is not Turner's express waiver of counsel, the subject of Rule 4-215(b), nor Turner's desire to discharge counsel, the subject of Rule 4-215(e), but counsel's desire to withdraw from representation, the subject of Rule 4-214.

A second question is whether the record supports the conclusion that the court adequately warned Turner that that if he discharged Cronan, or as was ultimately the case here, the court had reason to allow Cronan to withdraw, the court would not appoint new counsel for Turner and Turner would have to seek private counsel or represent himself. The record reflects that Turner knew of the consequences.

After the court acceded to Turner's request to dismiss the OPD and appoint counsel, at the February 16, 2018 court proceeding the court said:

> THE COURT: **And do you understand if I, the Court appoints an attorney for you and you do not get along with that attorney that's going to be it.** I'm not going to sit and go through the entire bar association before you're happy with an attorney?
>
> THE DEFENDANT: **I understand that point, Your Honor**.
>
> THE COURT: Okay. You understand if you are not happy with your new, if the Court appoints an attorney for you and you're not happy with that new attorney **you may end up having to represent yourself at trial**?
>
> THE DEFENDANT: **Yes.**

(emphasis -added.) In other words, if Turner appeared without an attorney, the court would be deemed to have waived that right by inaction under Rule 4-215(d).[6] That point was driven home to Turner before the court discharged Cronan.

On July 27, 2018, with Cronan's motion to withdraw looming, the court discussed with Turner that he would have to get counsel if Cronan's motion to withdraw was granted.

> THE COURT: There is a petition by Mr. Cronan to remove himself as counsel for you to have him dismissed as his lawyer. Are you familiar with that?
>
> THE DEFENDANT: Yes, I received that yesterday in the mail at the jail.
>
> THE COURT: **And I will tell you that there is a strong likelihood that he will be dismissed as your lawyer in order to give you time to get a lawyer before your trial on August the 27th.**
>
> * * *
>
> THE COURT: . . .Mr. Cronan is here today because the judge did not grant his motion to strike. I believe that the judge felt that there should be time for you to get a notice from him and for you to consider whether you wish to have him continue or not as your lawyer. You understand that?
>
> THE DEFENDANT: Yeah, the judge told me when he appointed Mr. Cronan that he wasn't going to go through the whole...

[6] Rule 4-215(d) provides:

> If a defendant appears in circuit court without counsel on the date set for hearing or trial, indicates a desire to have counsel, and the record shows compliance with section (a) of this Rule, either in a previous appearance in the circuit court or in an appearance in the District Court in a case in which the defendant demanded a jury trial, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial.

MR. CRONAN: Bar association.

THE DEFENDANT: Bar association. It's, it's I don't think, you think I'm being, I mean, I don't know why he is hoping to strike hisself (sic)

THE COURT: **Well here's what I want you to understand, that if Mr. Cronan's appearance is stricken you're going to have to find another lawyer.**

THE DEFENDANT: But I don't got no, I don't got no . . .

THE COURT: Let me finish.

THE DEFENDANT: All right.

THE COURT: **You're going to have to have a lawyer before you come to court on August 27th. You understand that?**

THE DEFENDANT: **Yeah, I understand that.**

* * *

THE COURT: Well whether he is going to be your lawyer on the 27th of August or not I don't know that's up to you and him. He is seeking to be removed as your lawyer and it is likely that if he has given you sufficient notice the judge will sign an order removing him as your lawyer. **Which means you'll have to get a lawyer before you come back here on August the 27th. Do you understand that?**

THE DEFENDANT: Yeah, but I, I'm still not understanding the process, your Honor.

* * *

THE COURT: Okay. So I'm going to give you until next Wednesday to decide with Mr. Cronan **whether you want to enter a plea in this case. If you don't it will be set in for a jury trial, I'm sorry a Bench trial on August the 27th. Okay?**

THE DEFENDANT: **All right**.

THE COURT: Next Wednesday is August the 1st. So you and Mr. Cronan talk to each other about what you want to do between then and now….

(emphasis added). Notwithstanding Turner's comments that he did not understand the process and that he was not "trying to proceed without a lawyer," Turner's answers show

that he knew that if Cronan withdrew, the court was not going to appoint another attorney for him and, more importantly, it was his responsibility to get new counsel. Indeed, the point of delaying the decision on Cronan's motion to withdraw was to give Turner time to speak with Cronan, try to resolve any differences, and convince Cronan to continue his representation.

We conclude that Cronan's letters of July 24 and August 6 explain to Turner that he would have to get another attorney or be prepared to represent himself if the court discharged him. The court's prior discussions with Turner at the hearings of February 16 and March 2, 2018, made clear that it was not inclined to appoint more than one private attorney for him. Most significantly, the judge's July 27th admonition to Turner did not mince words. In effect, the judge told Turner: "Whether you like it or not, your attorney is about to be discharged. You have a trial coming up in thirty days. It is up to you to take some action; get an attorney by the day of trial or you will have to try the case yourself."

We hold that the circuit court did not abuse its discretion in permitting Turner's court-appointed counsel to withdraw from representation. Further, the discussions the court had with Turner over several hearings satisfied the requirements of Rule 4-215(d) for waiver of counsel.

JUDGMENTS OF THE CIRCUIT COURT FOR TALBOT COUNTY AFFIRMED; APPELLANT TO PAY THE COSTS.