

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0576

September Term, 2014

THOMAS LEE WILSON

v.

STATE OF MARYLAND

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: September 18, 2015

*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.

A jury in the Circuit Court for Garrett County found Thomas Lee Wilson, appellant, guilty of seven counts of theft: \$1,000 to under \$10,000, and one count of theft scheme: \$10,000 to under \$100,000. For the purposes of sentencing, the court merged appellant's theft convictions into his conviction for a theft scheme and sentenced appellant to serve eight years in jail, all but eighteen months suspended, to be followed by three years of unsupervised probation and payment of \$10,000 in restitution.

In his timely filed appeal, appellant raises a single question for our consideration, which we have rephrased as follows¹:

Did the trial court err in accepting appellant's waiver of the right to counsel?

Because we conclude that the circuit court failed to adhere to the provisions of Md. Rule 4-215(e) before allowing appellant to discharge his assigned public defender, we shall reverse appellant's convictions and remand this case for a new trial.

FACTS AND PROCEEDINGS

Because appellant raises a question of legal procedure, we need not recount at great length the evidence presented during appellant's trial. We note briefly that appellant's conviction arose from his employment as an automobile salesperson. Appellant, who lived and worked in Virginia, agreed to locate and make arrangements to purchase a dump truck

¹ The question, as posed by appellant in his brief reads:

Did the court err in accepting Appellant's waiver of the right to counsel where the court failed to inform him of the importance of the assistance of counsel, misadvised him of the consequences of discharging his assigned public defender, failed to conduct an inquiry to ensure that he was proceeding knowingly and voluntarily, and failed to determine and announce on the record that he was proceeding knowingly and voluntarily?

with certain specifications on behalf of a customer who owned a landscaping company in Garrett County, Maryland. Over the course of five months, the customer wrote seven checks payable to appellant totaling \$31,190.00 for the purchase, inspection, and registration of the dump truck. Appellant cashed the checks but paid only \$13,500 toward the purchase price of the dump truck, keeping the other \$17,690.

Appellant was arrested in Virginia on December 4, 2012. He was extradited to Maryland on December 13, 2012, at which time he was taken before a commissioner of the district court for an initial appearance. During the hearing, the commissioner provided appellant with a copy of the charges against him and informed him of the allowable penalties for each charge. The commissioner also informed appellant of his right to counsel and provided documents to him that described how an attorney could be helpful to appellant before, during, and after trial and instructed him not to wait until his assigned trial date to obtain counsel. The documents also included the contact information for the Public Defender's Office. The commissioner set appellant's bond at \$4,000.

The next day, appellant appeared before a judge of the Circuit Court for Garrett County for a bail review hearing.² In accordance with the requirements of Md. Rule

² As noted by the court at the review hearing on December 14, 2012, appellant's case was still pending in the District Court for Garrett County at that time. The court noted that appellant was entitled to representation at his bail review hearing, but noted that there was nobody from the Public Defender's Office that was available that day. The court indicated that, after appellant obtained counsel, if appellant wanted another bail review hearing, the court would give him one.

4-215(a),³ the court ensured that appellant had received a copy of the charging documents and advised him of the charged offenses and the potential penalties, informed appellant of his right to counsel and the importance of counsel,⁴ and cautioned appellant that if he

³ At the time of appellant's hearing, Md. Rule 4-215(a) required:

- (a) At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:
 - (1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.
 - (2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.
 - (3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.
 - (4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.
 - (5) If trial is to be conducted on a subsequent date, advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

Rule 4-215(a) was subsequently amended, effective January 1, 2014, by the addition of a new provision, (a)(6), which is not relevant in the instant case. Md. Rule 4-215 Historical Notes, Credits.

⁴ In this case, the court admonished appellant that it "can't tell you the importance of getting an attorney[,]" repeatedly directed appellant to immediately contact the public defender's office, and explained that an attorney could help appellant decide if he wanted a jury trial, and could speak to the victim about dropping the charges. The court presumably also had before it in the record, copies of the Initial Appearance Report, Notice of Advice of Right to Counsel, and the Important Notice that appellant had signed and received copies of from the district court commissioner the previous day. These (continued...)

appeared for trial without counsel, the court could find that he had waived his right to counsel and require him to proceed to trial unrepresented.⁵ After learning from appellant that he was a single parent, was presently unemployed, and had never been arrested before, the court decided not to change the terms of his bond as set by the district court commissioner.

On January 4, 2013, appellant's assigned Assistant Public Defender ("public defender") entered her appearance on appellant's behalf in the district court. In March of 2013, appellant requested a jury trial and his case was transferred to the circuit court. Appearing with counsel before the circuit court on May 1, 2013, appellant reiterated his request for a jury trial. Through a Motion to Continue and Motion to Waive 180-Day Rule filed on July 30, 2013, appellant requested additional time to investigate potential witnesses. Appellant appeared in court with his public defender on August 6, 2013, to confirm that he waived his right to be tried within 180 days.

On October 24, 2013, five days before appellant's trial was scheduled to begin, appellant faxed a document to his public defender, requesting that the court "dismiss [his] Court Appointed Attorney," so he could "get [his] own attorney." The next day, his public

documents offered additional specific information about appellant's right to counsel and the ways an attorney could be helpful in the preparing and trying his case. Under all the circumstances, we are persuaded that the court, through the collective effect of its comments on the record, adequately informed appellant that he was entitled to the representation of an attorney and emphasized that the advice and assistance of counsel were important and could be helpful to appellant in this case.

⁵ Because appellant did not express any inclination to represent himself at the hearing, the court was not obliged to conduct a waiver inquiry as required by Rule 4-215(a)(4).

defender filed a motion to withdraw her appearance in the case, stating that appellant “wishe[d] to retain private counsel,” attaching as an exhibit, the fax she had received from appellant the day before. At a hearing on October 29, 2013, his public defender informed the court that appellant had negotiated a fee agreement and made arrangements to retain a private attorney from Cumberland, who would enter his appearance on behalf of appellant if the court would grant a continuance. His public defender further reported that appellant was scheduled to have a meeting with his private counsel the following week. The court granted his public defender’s Motion to Withdraw with no further discussion.

The court then addressed appellant, warning him that “[i]f there’s a breakdown between you or [private counsel] or anyone else, you will do the case by yourself unless you have compelling reasons.” The court cautioned appellant that, if he was acting “for the purpose of delay, you’re going to be ending up doing the case yourself, which you do not want to do.” The court subsequently reiterated:

So, if something breaks down with [private counsel], you’re not able to go back to the Public Defender’s Office. You’ve exhausted that resource, so you’ll either get another attorney -- and it’s not going to be good enough to come in and say, well, I’ve got arrangements with someone. Your trial date’s the 19th of December.

With no further discussion, the court postponed appellant’s trial to December 19, 2013.

On December 19, 2013, appellant appeared in court for his trial, without counsel. Though appellant confirmed that he intended to represent himself, he did so believing he was no longer eligible to receive services from the Public Defender’s Office. After informing appellant that he had a right to an attorney, the court ruled that appellant had

elected to proceed *pro se*, and that his trial would proceed as scheduled. Appellant pled not guilty to each of the eight charges against him and elected to be tried by a jury.

In the trial, which began immediately, the State called three witnesses. Appellant testified in his own defense, but did not call any additional witnesses. Based on the evidence presented, the jury convicted appellant of seven counts of theft: \$1,000 to under \$10,000 and one count of theft scheme: \$10,000 to under \$100,000.

At sentencing on April 1, 2014, the court again inquired whether appellant wanted counsel to assist him. Appellant asked if an attorney would be available that day. The court responded, indicating that if appellant wanted an attorney, another delay would be necessary. Appellant stated that he would represent himself because he did not “want to drag everybody back in here again” and had “done enough.” Appellant then proceeded to make what the court characterized as conflicting claims regarding his ability to repay the remaining \$10,000, leading the court to postpone sentencing and refer appellant for a mental health evaluation.

Eight days later, appellant filed a Motion for Request for Court to Appoint Counsel. On April 28, 2014, the same public defender re-entered her appearance on appellant’s behalf, and later represented appellant at his sentencing hearing on May 6, 2014. At that hearing, the court sentenced appellant to eight years of incarceration, all but 18 months suspended, to be followed by three years of probation. The court further ordered appellant to pay the remaining \$10,000 in restitution. Appellant timely filed notice of the instant appeal on May 14, 2013.

ANALYSIS

Appellant asserts that at several points prior to his trial, the circuit court failed to follow the express requirements of Md. Rule 4-215.⁶ We agree that the trial court failed to follow the mandatory provisions of Rule 4-215(e) at appellant's hearing on October 29, 2013. Md. Rule 4-215(e) provides:

- (e) 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.

We examine *de novo* a trial court's compliance with the requirements of Md. Rule 4-215. *Gutloff v. State*, 207 Md. App. 176, 180 (2012). Strict compliance with every provision of the Rule is required in order to support a trial court's determination that an individual's waiver of his or her right to counsel is made knowingly and voluntarily. *See id.* (citing *Webb v. State*, 144 Md. App. 729, 741 (2002)); *Broadwater v. State*, 401 Md.

⁶ Because we find the circuit court's errors during the hearing on October 29, 2013 are sufficiently compelling to justify reversing appellant's convictions and remanding this case for a new trial, we decline to address appellant's assertions that the circuit court committed other violations of the provisions of Rule 4-215 on other occasions prior to his trial.

175, 182 (2007) (“Strict, not substantial, compliance with the advisement and inquiry terms of the Rule is required in order to support a valid waiver.”). The Court of Appeals has characterized Rule 4-215 as “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). So long as a court has strictly complied with the provisions of the Rule, however, we review the determinations made by the court in the application of the Rule, “only for an abuse of discretion.” *Peterson v. State*, 196 Md. App. 563, 573-74 (2010) (citing *Grant v. State*, 414 Md. 483, 491 (2010)).

In the instant case, we discern multiple errors made by the circuit court in the course of the hearing on October 29, 2013. Appellant’s unambiguous request to discharge his public defender was communicated to the court by appellant in his written request on October 24, 2013, in his public defender’s written Motion to Withdraw filed on October 25, 2013, and orally by his public defender at the hearing on October 29, 2013. Appellant’s express request to discharge his public defender, who had legally entered her appearance on his behalf, activated the court’s obligations under Md. Rule 4-215(e).

The Court of Appeals has explained that “when a defendant expresses a desire to discharge his or her counsel in order to substitute different counsel . . . a court must ‘ask about the reasons underlying a defendant’s request to discharge the services of his trial counsel and provide the defendant an opportunity to explain those reasons.’” *State v. Taylor*, 431 Md. 615, 631 (2013) (quoting *Pinkney v. State*, 427 Md. 77, 93 (2012)). If the defendant or his attorney volunteers an explanation for the defendant’s request without the court expressly inquiring, the court’s obligation to “provide the defendant with a forum in

which to explain the reasons for his or her request,” is fulfilled. *See Taylor*, 431 Md. at 640 (stating that the trial court may accept the reasons proffered by a defendant or counsel without inquiring further to clarify or rehabilitate a non-meritorious reason). “[T]he onus is on the trial judge to ensure the reason for requesting dismissal of counsel is explained.” *Hawkins v. State*, 130 Md. App. 679, 686 (2000). “The failure to inquire into a defendant’s reasons for seeking new counsel when the proper request has been made to the court is a reversible error.” *State v. Davis*, 415 Md. 22, 31 (2010) (internal citations and quotation marks omitted); *see also Williams v. State*, 435 Md. 474, 493 (2013) (“The Circuit Court’s failure to inquire into the reasons for that request [to discharge] before trial, in accordance with the Rule, is reversible error.”).

In the instant case, the circuit court did not inquire regarding why appellant wanted to discharge his public defender and obtain private counsel. Nor did appellant or his attorney voluntarily proffer any explanation for appellant’s request to discharge counsel. Because the circuit court did not allow appellant any opportunity to explain his reasons for seeking to discharge his public defender, the court failed to comply with the express requirements of Md. Rule 4-215(e), and thus, committed reversible error. *See Davis*, 415 Md. at 31. We conclude, therefore, that appellant’s convictions must be reversed and this case remanded for a new trial.

The plain language of Rule 4-215(e) also requires the court to make a finding as to whether the reason underlying the defendant’s request to discharge counsel is meritorious. “[T]he trial judge has the duty to listen, recognize that he or she must exercise discretion in determining whether the defendant’s explained reasons are meritorious, and make a

rational decision.” *Taylor*, 431 Md. at 642. The record “must be sufficient to reflect that the court actually considered the reasons given by the defendant.” *Id.* at 631 (internal citations and quotation marks omitted).

In this case, when the court granted his public defender’s Motion to Withdraw, the only information that was before the court was that appellant desired to discharge his assigned public defender and that he had made some progress toward retaining a private attorney. Because appellant had no opportunity to tell the court why he wanted to discharge his public defender, there was no information available for the court to consider to determine whether his request was meritorious. Thus, the record does not reflect that the circuit court properly exercised its discretion to determine whether appellant’s request was meritorious before allowing appellant to discharge his assigned attorney. Because strict compliance with every provision of Rule 4-215 is required, the court’s failure to consider the merits of appellant’s request to discharge counsel constitutes reversible error. *See, e.g., Broadwater v. State*, 401 Md. 175, 182 (2007) (“A failure to comply with the Rule constitutes reversible error.”) (citing *Moten v. State*, 339 Md. 407, 411 (1995)).

Finally, the plain language of Rule 4-215(e) requires the court to “comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.” Because appellant had not expressed any intention to waive his right to counsel at any time prior to the hearing on October 29, 2013, the circuit court had not been obliged to “[c]onduct a waiver inquiry pursuant to section (b) of this Rule,” in accordance with the requirements of Md. Rule 4-215(a)(4). At the hearing on October 29, 2013, however, by requesting to discharge his public defender, appellant very clearly “indicate[d] a desire to

waive counsel,” at least for a limited time until the private attorney he intended to retain entered his appearance on his behalf. Therefore, before allowing appellant to discharge his public defender, the court was required to conduct “an examination of the defendant on the record” and then “determine[] and announce[] on the record that the defendant [was] knowingly and voluntarily waiving the right to counsel.” Md. Rule 4-215(a)(4) and (b). The circuit court’s failure to do so constituted reversible error. *Gambrill v. State*, 437 Md. 292 (2014).

On the basis of the circuit court’s failures to strictly adhere to the requirements of Md. Rule 4-215(e) at the hearing on October 29, 2013, identified above, we conclude that appellant’s convictions must be reversed and his case remanded for a new trial.

**APPELLANT’S CONVICTIONS REVERSED.
CASE REMANDED FOR NEW TRIAL.
COSTS TO BE PAID BY GARRETT COUNTY.**