

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2207

September Term, 2013

JERIKO GRAVES

v.

STATE OF MARYLAND

Meredith,
Graeff,
Leahy,

JJ.

Opinion by Graeff, J.

Filed: June 23, 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.

Jeriko Graves, appellant, was charged, by criminal indictment, with two counts of possession of a controlled dangerous substance (“CDS”), one count of possession of CDS with intent to distribute, and second-degree assault. Following a jury trial in the Circuit Court for Anne Arundel County, appellant was acquitted of second-degree assault and convicted on the remaining counts.

On appeal, appellant presents the following three questions for our review:

1. Did the circuit court err in denying appellant’s pretrial request for a postponement to retain private counsel?
2. Did the circuit court err in denying appellant’s motion to suppress on the ground that the police lacked exigent circumstances to enter the apartment?
3. Did the circuit court err in admitting testimony regarding mail containing appellant’s name found inside the apartment, where the testimony indicated that the mail related to other criminal cases?

For the reasons that follow, we answer the first question in the affirmative, and therefore, we shall reverse appellant’s conviction.

FACTUAL AND PROCEDURAL BACKGROUND

Because we reverse appellant’s conviction on the ground that the court erred in denying his request to secure private counsel, we set forth only facts relevant to that issue.

Prior to the suppression hearing, the following colloquy occurred:

[APPELLANT’S COUNSEL]: . . . This is defense request for a postponement.

[THE COURT]: All right, go right ahead.

[APPELLANT’S COUNSEL]: Your Honor, thank you very much. I have had the opportunity to speak to [appellant]. [Appellant] has informed me that he would prefer to have John Robinson represent him in this matter as opposed to myself.

In speaking to [appellant], apparently Mr. Robinson has represented him in several cases in the past and he has been satisfied with Mr. Robinson’s services as his attorney in the past.

In terms of [appellant’s] situation right now, Your Honor, I would tell you, obviously, we are here for a motions hearing today. We have the trial date that is set. It is my understanding that Hicks runs from an arraignment that was held on October 1st. So we are becoming close to Hicks.

[Appellant] is being held now on – he anticipates being held for another 20 days. It is his hope to postpone this case both the motions hearing as well as the trial date. I have spoken to him about Hicks and the ramifications of that.

He would be willing to waive his rights under Hicks but he would like to postpone the motions hearing and the trial date to have the opportunity to essentially become removed from the incarceration and hire John Robinson to represent him in this matter, both for the motions as well as in the trial.

[THE COURT]: Okay. Well, I have to hear him if that is what he is requesting. . . .

* * *

[THE COURT]: [Appellant], if you would like to fire your Public Defender, then I must explain to you that before I could allow you to do that, I would have to continue the case if there is a meritorious reason. If there is no meritorious reason, then the case is going to go forward. Do you understand that?

[APPELLANT]: Yes, sir.

[THE COURT]: Did you at some point in time receive a copy of the charges in this case?

[APPELLANT]: Yes, I have.

[THE COURT]: And you understand how important counsel is, how an attorney can assist you, protect your constitutional rights whether you want to plead guilty or not guilty, an attorney can help you. Do you understand that?

[APPELLANT]: Yes, sir, I do.

[THE COURT]: You are charged with possession with intent to distribute cocaine. It carries 20 years in jail, \$25,000 fine. You are charged with possession of cocaine. It carries four years in jail, \$25,000 fine. You are charged with possession of marijuana. It carries a year in jail, a \$1,000 fine. You are charged with second-degree assault. It carries 10 years in jail, \$2,500 fine. Do you understand that?

[APPELLANT]: Yes, I do.

[THE COURT]: Are there any subsequent mandatory [sentences]?

[STATE'S ATTORNEY]: Yes . . .

[THE COURT]: From what?

[STATE'S ATTORNEY]: He is mandatory on the possession with intent [to distribute].

[THE COURT]: If [you] are convicted of Count 1, possession with intent to distribute cocaine, you may face a mandatory sentence of 10 years in prison without parole. Please indicate mandatory penalties advised.

Now, sir, if I find that you do not have a meritorious reason to discharge counsel, then the trial will proceed as scheduled. Do you understand that?

[APPELLANT]: Yes, I do.

[THE COURT]: All right. Have you hired John Robinson?

[APPELLANT]: No, sir, I haven't hired him.

[THE COURT]: Have you paid John Robinson?

* * *

[APPELLANT]: No, sir.

[THE COURT]: All right. Have you personally spoken to him about this case?

[APPELLANT]: Yes, I was incarcerated and my fiancé, Jodi Johnson, went and got a figure from him what he would represent me for.

[THE COURT]: Okay.

[APPELLANT]: And I was trying to get that together as soon as I got out of here.

[THE COURT]: All right. The Court will deny your request to postpone the motion hearing. The case is set here today for a motions hearing. This motions hearing has been scheduled for quite some time. There was originally a trial date of January 8, it was postponed. It was rescheduled until today's date.

This had to do with the fact that the case is in trial posture and there was a motions hearing agreed upon. [Appellant's counsel] filed for it, it was granted on the 28th day of January. The case is set today.

[Appellant] may wish to hire Mr. Robinson but there is nothing to indicate that he has paid Mr. Robinson, met with Mr. Robinson or has hired Mr. Robinson. I will deny the postponement request.

If you want to fire [appellant's counsel], you can ask me to do that. Otherwise, [appellant's counsel] is in your case. Do you want to fire [appellant's counsel]?

[APPELLANT]: I will keep him on.

* * *

[THE COURT]: . . . request to postpone any motions hearing is denied. . . .

DISCUSSION

Appellant contends that “the circuit court erred in denying [his] pre-trial request to replace his appointed counsel with private counsel.” Specifically, he asserts that the court did not comply with Maryland Rule 4-215(e) because it never asked him why he wanted to discharge his counsel.

The State argues that the circuit court “was within its discretion in denying [appellant’s] eleventh-hour request for a postponement . . . and complied with Rule 4-215 in asking [appellant] whether he wanted to discharge his public defender.” It acknowledges that appellant’s request, albeit ambiguous, triggered the inquiry required by Rule 4-215(e), but it asserts that the court conducted the relevant inquiry. In support, it notes that, after denying appellant’s request for a postponement, the court asked appellant if he wanted to fire his assigned public defender, and appellant stated that he would “keep him on.” The State asserts: “[Appellant] declined the court’s express invitation to request discharge of his counsel. When he did so, the court’s duties under Rule 4-215(e) were complete. There was no abuse of the court’s discretion.”

Maryland Rule 4-215 implements a defendant’s constitutional right to counsel in a criminal case. *State v. Taylor*, 431 Md. 615, 631 (2013). It provides, in pertinent part, as follows:

(e) Discharge of Counsel – Waiver. *If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall*

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

(Emphasis added.).

The Court of Appeals has explained the significance of the requirement that the court give the defendant the opportunity to explain the reason for the request to discharge his or her attorney:

“[T]his requirement is an indispensable part of subsection (e) in that it essentially leads the trial judge into the various options set forth therein. Where the trial judge finds a defendant’s reasons to be meritorious, he must grant the request and, if necessary, give the defendant an opportunity to retain new counsel. When a defendant makes an unmeritorious request to discharge counsel, the trial judge may proceed in one of three ways: (1) deny the request and, if the defendant rejects the right to represent himself and instead elects to keep the attorney he has, continue the proceedings; (2) permit the discharge in accordance with the Rule, but require counsel to remain available on a standby basis; (3) grant the request in accordance with the Rule and relieve counsel of any further obligation. *Fowlkes v. State*, 311 Md. 586, 604-05, 536 A.2d 1149, 1158-59 (1988). It should be obvious, then, that subsection (e) gives practical effect to the Defendant’s constitutional choices. It requires the defendant to decide if he will continue with present counsel or proceed pro se. Allowing a defendant to specify the reasons for his request is an integral part of the Rule and cannot be dismissed as insignificant.”

Gambrill v. State, 437 Md. 292, 301-02 (2014) (quoting *Williams v. State*, 321 Md. 266, 272-73 (1990)).

In *Gambrill*, 437 Md. at 292, the Court of Appeals discussed what constitutes a request to discharge counsel that triggers the requirements of Rule 4-215(e). The Court explained that “a request to discharge counsel is ‘any statement from which a court could conclude reasonably that the [accused] may be inclined to discharge counsel.’” *Id.* at 302 (quoting *Williams v. State*, 435 Md. 474, 486-87 (2013)). In that case, the Court held that Rule 4-215 was triggered when, on the day trial was to commence, counsel for the accused stated: “Your Honor, on behalf of [the accused], I’d request a postponement. He indicates that he would like to hire private counsel in this matter.” *Id.* at 294. In holding that this constituted a request to discharge counsel, the Court explained:

Although *Gambrill*’s request to hire a new attorney was coupled with a request for a postponement and may not have been a paradigm of clarity, its inherent ambiguity did not relieve the judge of his obligation to comply with Rule 4 215(e); its ambiguity mandated judicial inquiry followed by a determination. To hold otherwise would be to thwart the very purpose of Rule 4-215(e), which is to give practical effect to *Gambrill*’s constitutional options. In the absence of inquiry of *Gambrill*, his reasons for requesting a discharge of counsel were not elucidated so that the judge could not give practical effect to *Gambrill*’s constitutional choices.

Id. at 305-06.

The Court also rejected the State’s argument that Rule 4-215(e) was not implicated because *Gambrill* had not yet hired private counsel. *Id.* at 306. It explained:

Whether Gambrill made financial arrangements with private counsel is not the determinative inquiry as to whether a Rule 4-215(e) colloquy was required, but rather only if Gambrill made statements from which the judge could have reasonably concluded that Gambrill wanted to discharge counsel.

Gambrill's request, perhaps ambiguous, was a statement from which the trial judge could have reasonably concluded that Gambrill wanted to discharge his public defender, triggering the inquiry and determination by the court under Rule 4-215(e). *When an ambiguous statement by a defendant or his or her counsel is made under Rule 4-215(e), the fulcrum tips to the side of requiring a colloquy with the defendant.*

Id. at 306-07 (emphasis added).

Here, appellant's counsel's request to obtain private counsel was virtually identical to that in *Gambrill*. Accordingly, the request invoked the requirements of Rule 4-215(e), including that the court permit appellant to explain the reason for his request. The record, however, reflects that the court did not do so.

At no point during the hearing did the court permit appellant to explain why he wanted to obtain private counsel. Although appellant's counsel did provide some explanation regarding why appellant desired to be represented by private counsel, appellant was never asked if that was an accurate or complete statement. *Compare Taylor*, 431 Md. at 625, 629, 639 (accused was given the opportunity to explain his reasons for desiring to discharge counsel where his current counsel stated the relevant reasons and the accused asserted "that pretty much sums it up," adding that he did not see "eye-to-eye" with his current counsel). Accordingly, because the court failed to engage in a colloquy with appellant regarding the

reason for his request, the circuit court erred, and a new trial is required. *See State v. Davis*, 415 Md. 22, 31 (2010) (“The failure to inquire into a defendant’s reasons for seeking new counsel when the proper request has been made to the court is reversible error.”).

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY REVERSED. CASE
REMANDED TO THAT COURT FOR
FURTHER PROCEEDINGS. COSTS
TO BE PAID BY ANNE ARUNDEL
COUNTY.**