Circuit Court for Baltimore City
Case No. 115007015

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 658

September Term, 2016

MONTEZ SINGLE

v.

STATE OF MARYLAND

Woodward, C.J.
Leahy,
Friedman,

JJ.

Opinion by Leahy, J.

Filed: September 14, 2017

A jury in the Circuit Court for Baltimore City convicted Montez Single ("Appellant") of two separate crimes: 1) wearing, carrying, or transporting a handgun on the person, Maryland Code (2002, 2012 Repl. Vol., 2016 Supp.), Criminal Law Article ("CL"), § 4-203, and 2) possession of a regulated firearm by a prohibited person, Maryland Code (2003, 2011 Repl. Vol., 2016 Supp.), Public Safety Article ("PS"), § 5-133. Single received separate sentences with a total executed time of fifteen years, the first five without parole. He filed a timely appeal, presenting two issues for our review:

1. "Do the handgun offenses merge for sentencing purposes?"
2. "Did the trial court err in denying Appellant's request for a postponement without complying with the requirements of Maryland Rule 4-215?"

We hold that the circuit court correctly determined that the charges did not merge for sentencing purposes pursuant to the Court of Appeals' precedent. We further hold that the circuit court was within its discretion when denying Single's postponement request under Maryland Rule 4-215 because it considered the reasons for Single's request and found them unmeritorious. We therefore affirm Single's convictions and sentences.

BACKGROUND

A. The Shooting

In its brief, the State accepts the facts, with certain exceptions, as stated in the Appellant's brief. The following statement of the facts is based on the Appellant's account of the facts and trial transcripts.

On December 17, 2014, Sergeant Robert Dohony and Sergeant Lisa Cornish of the Baltimore Police Department were stopped at a red light at the corner of Fulton Avenue and Baltimore Street when they heard a single gunshot "very close." Looking toward the direction of the sound, they saw a man run out of an alley and head eastbound on Baltimore Street, followed by Single, who walked "very casually" out of the alley. The officers called in a description of the first man, and after exiting the vehicle, Sgt. Dohony pulled his weapon, commanded Single to get on the ground, and performed a stop and frisk, where he found a loaded semi-automatic .380 caliber handgun with a cartridge stuck in the slide that prevented the gun from firing further rounds.

Officer Johnson was also patrolling in the area when, after hearing the gunshot, he decided to investigate. A man flagged him down roughly one block from Baltimore Street and Fulton Avenue. After Johnson exited his vehicle, the man stated that he had been shot and requested medical assistance.

Officer Vernes responded to the call and found that Sgt. Dohony had already apprehended a suspect. He proceeded to Off. Johnson where he saw an individual on the ground who repeatedly yelled, "I've been shot." Off. Vernes lifted the man's shirt and saw a small hole in the man's lower back. Off. Vernes then returned to the location of the shooting where he and another officer located a shell casing, which was later identified as a .380 caliber shell casing.

Single has previous convictions for distribution of controlled dangerous substances and possession with the intent to distribute, which prohibit him from possessing a regulated

firearm like the one that Sgt. Dohony found on Single's person. A grand jury indicted Single on ten charges stemming from the shooting on December 17, 2014: (1) attempted first-degree murder, CL § 2-205); (2) attempted second-degree murder, CL § 2-206; (3) first-degree assault, CL § 3-202; (4) second-degree assault, CL § 3-203; (5) attempted robbery with a dangerous weapon, CL § 3-403; (6) attempted robbery, CL § 3-402; (7) wearing and carrying a concealed dangerous weapon on or about the person with the intent to injure or kill another, CL § 4-101; (8) use of a firearm in the commission of a violent felony, CL § 4-204; (9) wearing, carrying, and transporting a handgun on or about their person, CL § 4-203; and (10) possession of a regulated firearm by person who has been convicted of a disqualifying crime, PS § 5-133.

B. The Postponement Request, Trial, and Sentencing

On the morning of the scheduled trial date, as court and counsel discussed voir dire questions, Mr. Rosenberg, who had been representing Single since his indictment, advised that his client wished to address the court. The following colloquy ensued:

> [DEFENSE COUNSEL]: Your Honor, I don't think that – I think Mr. Single wants to tell the Court something.
>
> THE COURT: Mr. Single.
>
> THE DEFENDANT: Yes, ma'am, **I want to request a postponement.**
>
> THE COURT: Denied. **This is a specially [sic] case**. **Now if you can tell me your reasons why you want a postponement so you have a record but I'm not postponing this case. You've been in jail since 2014**.
>
> THE DEFENDANT: And Your Honor **I've never once seen a copy of – I don't have nothing as far as dealing with my case. I've been asking about my motions. I haven't received none and he just told me out of his own mouth that he don't want to represent me**. I got another attorney

> that will be in here when I call him. I already done talked to him about it. I don't feel like I have a fair chance right now.
>
> THE COURT: Well, **Mr. Rosenberg is one of the best lawyers in the bar so I'm not granting your postponement request**. **You can fire Mr. Rosenberg if you want and represent yourself but we're starting this trial today now. So you can have a seat and think about that. Postponement denied.**

(Emphasis added).

A short pause in the proceedings occurred after this exchange.

Over the course of the two-day trial, the court granted judgments of acquittal on the charges of attempted first-degree murder, attempted robbery with a dangerous weapon, and attempted robbery. The jury subsequently found Single not guilty on charges of first-degree assault, second-degree assault, and use of a firearm in a crime of violence. Single, who did not dispute his possession of the firearm recovered by police, was convicted only of violating the following: (1) CL § 4-203(a)(1)(i), which bars individuals, with certain exceptions inapplicable here, from wearing, carrying, or transporting a handgun on or about the person and (2) PS § 5-133(b), which prohibits an individual from possessing a regulated firearm if that individual has previously been convicted of a crime contemplated in the statute.

On May 2, 2016, during the sentencing hearing, the circuit court noted its uncertainty with whether the two convictions merged for sentencing purposes but proceeded with the hearing. For the conviction for possession of a firearm by a prohibited person, Single received a sentence of fifteen years, the first five without parole. For the conviction for wearing, carrying, and transporting a handgun, Single received a sentence

of three years, to be served concurrently with the fifteen-year sentence. On May 9, 2016, Single timely filed his notice of appeal to this court.

DISCUSSION

I. Sentencing Merger

Single contends that the sentencing court erred in failing to merge his conviction for wearing, carrying, and transporting a handgun into the conviction of possession of a firearm by a disqualified person. Single advocates several reasons for such a merger, including the rule of lenity and that he was improperly "subjected to multiple sentences for a single instance of possessing a handgun."

The State, however, notes, and Single acknowledges in a "*but see*" citation, that the Court of Appeals has previously held that these two offenses do not merge in *Pye v. State*, 397 Md. 626, 628 (2007), and *Frazier v. State*, 318 Md. 597, 612-13 (1990). When determining if two separately-defined, statutory criminal violations should merge to prevent violations of double jeopardy, courts generally apply the "required evidence" test delineated in *Blockburger v. United States*, 284 U.S. 299, 304 (1932). Even if the "required evidence" test finds that two offenses are the same, however, "separate sentences may be permissible, at least where one offense involves a particularly aggravating factor, if the Legislature expresses such an intent." *Whack v. State*, 288 Md. 137, 143 (1980). The rule of lenity, a principle of statutory construction, is only available when the Legislature's intent to impose multiple punishments for a single act is in doubt or ambiguous. *See McGrath v. State*, 356 Md. 20, 25 (1999).

The *Frazier* Court reviewed the legislative history of predecessor statutes to those under consideration in this appeal, and concluded that the two offenses do not merge for sentencing purposes, explaining, "With respect to Article 27, § 445(c) [prohibiting handgun possession by a person previously convicted of a crime of violence] and § 36B(b) [prohibiting wearing, carrying, or transporting a handgun on the person], there is every indication that the Legislature intended that separate sentences may be imposed for the two offenses." *Frazier*, 318 Md. at 613. The Court instructed:

> What Judge Eldridge, speaking for the Court in *Whack* [*v. State*, 288 Md. 137, 141-142 (1980)], said, in discussing the legislative intent in this area, is appropriate here. . . . "[I]n enacting the handgun act, the Legislature was concerned with the matter of duplicative legislation. Where it desired no duplication, it specifically amended or superseded those other statutes." It is significant that the Legislature did not amend or supersede Article 27, § 445(c). So, even if offenses are deemed the same under the required evidence test, the Legislature may punish certain conduct more severely if particular aggravating circumstances are present, by imposing punishment under two separate statutory offenses. *See Newton v. State,* 280 Md. 260, 274 n.4 (1977). The Legislature's concern about the possession of a handgun, and its additional concern about the aggravating circumstance of the handgun being possessed by a person who has been convicted of a crime of violence, is not unreasonable. **When all of this is viewed in the light of the legislative policy declared in § 36B(a)**, *see supra*, **it is plain that the Legislature did not intend to prohibit separate penalties for violation of the two statutes. We hold that the two offenses of which Frazier was convicted do not merge.**

Frazier, 318 Md. at 613-15 (footnote omitted; emphasis added).

In 2007, the Court of Appeals reaffirmed this holding, concluding that *Frazier* remained good law despite legislative changes to gun laws during the intervening years:

> **There is no indication . . . that the General Assembly intended to modify the holding in *Frazier*** when it enacted the 1996 and 2000 Acts relating to the use of weapons. **The contrary would appear to be more likely.** Thus

> *Frazier,* which we decline to overrule, is controlling . . . In neither of the codifications at issue here was reference specifically made to avoidance of duplication. In neither of the two statutory modifications, has the General Assembly indicated that duplicative sentences under separate statutory offenses, arising out of one incident involving handguns, are to be avoided.
>
> The General Assembly is presumed to be aware of our decisions. We recently stated [that] . . . . "we have been reluctant to overrule our prior decisions where it is likely that the Legislature, by its inaction, indicates its adoption, or at least acceptance, of the interpretation reflected in the opinion announcing the decision . . . ."
>
> This principle was also expressed in *Jones v. State,* 362 Md. 331, 337–38, (2001), in which this Court observed:
>
> > "'The General Assembly is presumed to be aware of this Court's interpretation of its enactments and, if such interpretation is not legislatively overturned, to have acquiesced in that interpretation. This presumption is particularly strong whenever, after statutory language has been interpreted by this Court, the Legislature re-enacts the statute without changing in substance the language at issue. Under these circumstances, it is particularly inappropriate to depart from the principle of stare decisis and overrule our prior interpretation of the statute.'"
>
> The General Assembly is presumed to have had full knowledge of our holding in *Frazier* when it enacted the legislation on which [the petitioner] relies. Therefore, **had the General Assembly wanted to avoid duplication with respect to handgun sentences arising out of a single incident, it certainly could have, and we believe would have, included in that legislation a provision prohibiting such sentences. It did not do so.** Nothing but the passage of time and the legislation on which the petitioner's argument depends, which simply increased the penalty, have occurred since *Frazier*. . . .

Pye, 397 Md. at 635-37 (citations omitted; emphasis added).

Frazier, as reaffirmed by *Pye,* establishes that a conviction for violating CL § 4-203(a), which prohibits wearing, carrying, or transporting a handgun on the person, does not merge for sentencing purposes with a conviction for violating PS § 5-133(b), which

prohibits possession of a regulated firearm after a disqualifying conviction. As acknowledged in Single's brief and advanced by the State, mandatory precedent governs this issue. Accordingly, we hold the trial court did not err in imposing separate sentences for those convictions.

II.

Compliance with Maryland Rule 4-215(e)

Single argues that "the trial court erred in denying [his] request for a postponement without complying with the requirements of Maryland Rule 4-215." Single maintains that his "clear request" for postponement required the circuit court to first listen to his reasons for wanting to discharge counsel and determine—on the record—whether those reasons were meritorious and required further action. Single contends that failure to do so violated his right to counsel under the United States Constitution and the Maryland Declaration of Rights, thus requiring reversal.

The State counters that Single's rights were not violated because Rule 4-215(e) does not explicitly require findings on the record of the merits of a defendant's reasons for requesting a discharge of counsel. The State argues that because the plain language of Rule 4-215(e) does not require such an express determination, the circuit court can implicitly determine the merit of the reasons for requesting discharge and that here, the court validly did so.

Article 21 of the Maryland Declaration of Rights and the Sixth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment,

"'guarantee a right to counsel, including appointed counsel for an indigent, in a criminal case involving incarceration.'" *Broadwater v. State,* 401 Md. 175, 179 (2007) (citation omitted). To implement and protect the right to counsel, Maryland Rule 4–215 "'provides an orderly procedure to insure 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.'" *Id*. at 180-81 (citation omitted).

Requests to discharge counsel are governed Rule 4-215(e), which provides:

> (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 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).

A. Rule Interpretation

When applying a procedural rule, we will interpret the rule according to its plain meaning by first looking at "the words of the rule." *Pinkney v. State*, 427 Md. 77, 88 (2012). We read the rule in the context of its entirety and interpret it logically. *Id.*

Subsection (e) of Rule 4-215 is absent of any language requiring the court to state, on the record, its finding regarding the merits of a defendant's reasons for wanting to

discharge counsel. Applying the 'plain language' canon of construction, it is clear that the section does not contemplate this as a requirement, as it makes no mention of a requirement in writing or even announcing the finding aloud to the parties. Looking at the entirety of Rule 4-215 supports this conclusion. In stark contrast to subsection (e), subsection (b) requires that the court "determines *and announces on the record*" its findings as to whether a defendant knowingly and voluntarily waived his or her the right to counsel. (Emphasis added). Rule 4-215(e), on its face, therefore does not require a court to find on the record that a defendant's reasons for discharge are meritorious and thus may be satisfied by an implicit determination when the record establishes that the circuit court actually considered the reasons proffered. *See, e.g., State v. Westray*, 444 Md. 672, 687 (2015) ("It is true that the court did not explicitly state that it found [the defendant] to be acting knowingly and voluntarily [in discharging counsel], but the court clearly was exploring those issues at the hearing and, just as clearly, concluded that [the defendant] was acting knowingly and voluntarily when it permitted the discharge of counsel."); *Broadwater v. State*, 171 Md. App. 297, 326-328 (holding that the court did not err by failing to make an explicit finding on the merits regarding the reasons for appearing *pro se*); *Webb v. State,* 144 Md. App. 729, 747 (2002) (finding no error on appeal where "[t]he court, after listening to the explanation" for discharging counsel, "implicitly found the reason was non-meritorious.").

We therefore reject Single's contention that Rule 4-215(e) required the court to state expressly on the record why Single's reasons for discharging counsel were not meritorious. The plain language of the rule does not require such a formalized announcement, and we

refuse to graft such a requirement onto the Rule. An implicit finding is sufficient for the purposes of Rule 4-215(e).

B. Review for an Abuse of Discretion

Given the importance of the rights implicated, "Md. Rule 4–215(e) provides a 'precise rubric[ ]' with which we demand 'strict compliance.'" *State v. Graves*, 447 Md. 230, 241 (2016) (citation omitted). The Court of Appeals has identified a three-step analysis that a court must conduct when entertaining a request to discharge counsel pursuant to Rule 4-215(e):

> *(1) The defendant explains the reason(s) for discharging counsel*
>
> While the rule refers to an explanation by the defendant, the court may inquire of both the defendant and the current defense counsel as to their perceptions of the reasons and need for discharge of current defense counsel.
>
> *(2) The court determines whether the reason(s) are meritorious*
>
> The rule does not define "meritorious." This Court has equated the term with "good cause." (Citations omitted). This determination—whether there is "good cause" for discharge of counsel—is "an indispensable part of subsection (e)" and controls what happens in the third step. (Citation omitted).
>
> *(3) The court advises the defendant and takes other action*
>
> The court may then take certain actions, accompanied by appropriate advice to the defendant, depending on whether it found good cause for discharge of counsel—*i.e.*, a meritorious reason.

Dykes v. State, 444 Md. 642, 652 (2015) (citations and quotation marks omitted).

Interpretation of the Maryland Rules, including Rule 4-215(e), is a question of law, which we review *de novo*. *State v. Taylor*, 431 Md. 615, 630 (2013) (citing *Pinkney v.*

State, 427 Md. 77, 88 (2012)). We, however, review "a trial court's determination that a defendant had no meritorious reason to discharge counsel . . . for an abuse of discretion." *Cousins v. State*, 231 Md. App. 417, 438 (2017) (citations omitted). Abuse of discretion occurs when the decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Taylor*, 431 Md. at 630.

In *State v. Taylor*, a private attorney attended a pre-trial hearing and, in front of the appointed public defender, stated that the defendant's family had hired him to represent the defendant. *Id.* at 622-23. The court denied the request because this was already the second trial in the case (the original trial resulted in a hung jury) and between the two trials there had been fourteen postponements already. *Id.* at 623. The next day, another judge again denied it because private counsel would need a one-week continuance. *Id.* at 623-25. A third judge denied the petition after the public defender summarized the defendant's reasons for requesting discharge, and the defendant indicated his assent to the summary and explained his reasons further, but acceded to that representation after hearing that he would proceed *pro se* if the public defender did not represent him. *Id.* at 625-26. The State then raised the issue the following day, after which the court found that the reasons for the request lacked merit. *Id.* at 626-27.

On appeal, the Court of Appeals ruled that after a request is made, "the trial judge's duty is to provide the defendant with a forum in which to explain the reasons[.]" *Id.* at 631 (citing *Pinkney*, 427 at 93). The Court held that the circuit court complied by supplying

the defendant with such a forum. *Id.* at 640. The Court further ruled that the record must adequately indicate that the trial court actually considered the defendant's reasons. *Id.* (citing *Pinkney*, 427 Md. at 93-94). The Court concluded the defendant's rights were not violated, stating "[a] trial judge has no affirmative duty to rehabilitate a defendant's expression of why he or she may desire to discharge his or her counsel; rather, the 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." *Id.* at 642 (citations omitted).

In the present case, the court did not deny the request without providing a forum for Single to explain reasons for discharging counsel. As the excerpted record shows, Single initially asked only "for a postponement," without offering any reason. The court denied that request, noting that the case had been specially set and that Single had "been in jail since 2014,"[1] both of which constitute satisfactory reasons to deny a postponement moments before voir dire was to begin.

As in *Taylor*, the court also allowed Single to state his "reasons why [he] wanted a postponement so [he] had a record. . . ." Single explained to the court that he had received "nothing as far as dealing with [his] case," that his attorney had informed him that he did not want to represent him, that he had "another attorney that will be in here when" he called, and that he did not feel that he had "a fair chance right now."

[1] By the time Single moved to postpone trial and to discharge counsel on April 5, 2016, he had been in jail awaiting trial for nearly sixteen months, since his arrest on December 17, 2014.

In response, the court advised Single that his attorney was "one of the best lawyers in the bar" and that he could "fire him if [he] want[ed] but" trial would proceed "today." Here, the court implicitly considered whether Single's reasons for wanting to discharge counsel were meritorious, advised him that he would have to represent himself if he discharged counsel, and directed him to "have a seat and think about" what he wanted to do.[2]

Although the trial court initially responded, "Denied" to Single's request, "I want to request a postponement," it was proper for the trial court to deny the request for a continuance because Single did not initially present his reason for the postponement. In context of the proceedings, Single's request came on the morning of trial, in the middle of a discussion on voir dire questions, after counsel for both parties had already discussed various motions. By next inquiring into why Single wanted a postponement, the trial court elicited Single's dissatisfaction with his attorney. It is evident from the record that the court considered this dissatisfaction implicitly and was not persuaded that Single had "good cause" for discharging counsel, who was ready, willing, and able to proceed to trial immediately.

To be sure, the court did not use the magic words "non-meritorious reason." These words, while constituting a best practice, are not required, however. The trial judge responded to Single's complaints about the lack of communication regarding his

[2] We note that Single's acquiescence to proceeding with Mr. Rosenberg proved fruitful, as it resulted in acquittals on all charges except those for which Single conceded that he had no defense.

"motions," his claim that his counsel "just told" him that he did not "want to represent" him, his assertion that he had substitute counsel ready to step in, and his feeling that he did not have "a fair chance," by pointing out that his attorney was "one of the best lawyers in the bar." This statement, albeit brief, indicates that the court did not credit Single's complaints about the shortcomings of his attorney and thus made a determination on Single's request. *Cf., e.g. Cousins*, 231 Md. App. at 444-45 ("The trial court was under no obligation to accede to [the defendant's] request [to discharge counsel] and to credit his complaints. Instead, in holding that the demand was unmeritorious, the trial court properly exercised its discretion in determining what to accept as true, and what to discount as false."). Moreover, based on the court's previous observations that the case had been specially set, and that Single had been incarcerated since 2014, the court had good cause to deny the last-minute request to discharge counsel. Indeed, that timing, when viewed in light of Single's vague complaints about defense counsel, supported an inference that Single's request to discharge counsel was an improper pretext for delaying trial. *See generally State v. Campbell*, 385 Md. 616, 635 (2005) (stating that "requests to discharge [counsel] should not be used as 'eleventh hour' tactics to delay the trial. . . ."). On this record, we are satisfied that the trial court complied with the substantive and procedural requirements of Rule 4-215(e). Therefore, contrary to Single's contentions, we conclude the court afforded him an opportunity to explain why he wanted to discharge his attorney and exercised its discretion when it determined that those were not meritorious. *See Taylor,* 431 Md. at 642 (finding that Rule 4–215(e) requires only that the trial court "listen,

recognize that he or she must exercise discretion in determining whether the defendant's explained reasons are meritorious, and make a rational decision.").

We also hold that, based on the court's reasons for denying a postponement, and its ensuing advisements, the trial court did not abuse its discretion in finding Single's reasons for discharging counsel unmeritorious. Having previously denied Single's request for postponement, the court listened to his complaints about Mr. Rosenberg and expressly advised Single to "have a seat and think about" whether he wanted to proceed to trial with Mr. Rosenberg or to discharge counsel and proceed *pro se*. *See* Md. Rule 4-215(e) ("If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without 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."). After a pause in the proceedings for Single to consider his options, Single did not renew his request to discharge counsel. We therefore find no violation of Rule 4-215(e) because once Single made his decision not to discharge his attorney, the Rule required nothing more of the trial court.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.