Circuit Court for Wicomico County
Case No. 22-K-16-0386

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 105

September Term, 2018

GREGORY DAVID STERLING

v.

STATE OF MARYLAND

Graeff,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: June 11, 2019

*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.

Appellant, Gregory Sterling, was charged with attempted first-degree murder, attempted second-degree murder, first-degree assault, second-degree assault, and openly wearing and carrying a dangerous weapon with the intent to injure. Prior to his jury trial, appellant decided to discharge his attorney and proceed without counsel. The Circuit Court for Wicomico County permitted the discharge, and, self-represented, he proceeded to trial. He was convicted on all counts, and sentenced to life in prison on the attempted first-degree murder conviction. On appeal, he asks one question:

> Did the trial court err when it failed to strictly comply with the mandates of Maryland Rule 4-215 before it permitted Mr. Sterling to discharge his attorney and proceed pro se?

We answer "yes," reverse the judgment of the circuit court, and remand for a new trial.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was accused of stabbing Stephen Byrd with a machete in an altercation on May 2, 2016. Part of the incident was seen by Kurt Cook, who came upon the scene in his van and called 911. Mr. Cook identified the appellant as the person he had seen holding a machete.

At a pre-trial hearing on May 18, 2017, appellant indicated that he wanted to discharge the assigned assistant public defender. He was given the opportunity to explain why he wished to discharge his counsel, and defense counsel was given an opportunity to respond. The court found that appellant had not demonstrated a meritorious reason to discharge his attorney, but announced that she would permit appellant to do so. After advising appellant of the benefit of having an attorney and ways to obtain new counsel,

the court asked the prosecutor: "I'm going to ask, are you ready to tell us what his charges are and what [are] the maximum sentences that [he is] facing?" The prosecutor responded:

> Yes, Your Honor.
>
> The defendant is charged with attempted murder in the first degree. That carries a maximum penalty of 60 years.
>
> The defendant is also charged with attempted murder in the second degree. That carries a maximum penalty of 30 years.
>
> He's charged with assault in the first degree. That carries a maximum penalty of 25 years.
>
> Assault in the second degree, a maximum penalty of 10 year [sic] and a $2500 fine.
>
> And wear, carry, or -- openly wear and carry a dangerous weapon, Your Honor, carries a maximum penalty of three years.
>
> There may be a fine associated with that.
>
> I'm not sure, Your Honor, candidly.

The court then said to appellant, "Okay. So do you understand the nature of the charges against you and the maximum penalties?" Appellant responded, "Yes, ma'am, I do."

Stating that it found him to have "the intelligence and capacity" and that he "fully comprehends all of the matters [the court] advised him of," the court permitted appellant to discharge his attorney. At the conclusion of the hearing, the appellant signed a document referred to by the court as an "advice of right to counsel."

At the next hearing, on July 6, 2017, the court had the opportunity to correct any earlier deficiencies. *See Broadwater v. State*, 401 Md. 175, 201 (2007) ("judges may

supplement the advisements omitted or incorrectly given by their predecessors" in order to comply with Rule 4-215). During that hearing, which was the last time waiver of counsel was discussed, the court referred only to the advice the defendant had previously received:

> THE COURT: Now, you still haven't obtained counsel?
>
> APPELLANT: I'm representing myself, Your Honor.
>
> THE COURT: And that I recall we had another -- an earlier conversation about that.
>
> APPELLANT: Yes, we did.
>
> THE COURT: I just want to make sure, because I'm sure I explained to you that you had a right to counsel[,] to be represented. You've declined the Public Defender who was available to you, not one, but two, I think?
>
> APPELLANT: Correct.
>
> THE COURT: The first, Mr. [M.], and then Mr. [W.]. I believe I explained the advantages of counsel. I reviewed all of the requirements in the Rule, and I guess if you cannot tell, I'm sure that I made it clear last time that I would strongly advise you to think about having him.
>
> APPELLANT: Well, Your Honor, I strongly in fear of being misrepresented twice by two different Public Defenders that did not adequately prepare for my case, violated my constitutional rights, subsection 46-4, ineffective assistance of counsel. That's why I fired both of them, and I'm prepared for my case, myself.
>
> THE COURT: Okay.

Following his conviction and sentencing, appellant filed a timely appeal to this Court.

STANDARD OF REVIEW

"To determine if the trial court properly complied with Rule [4-215], we review its ruling de novo." *State v. Weddington*, 457 Md. 589, 598-99 (2018).

DISCUSSION

Contentions

Appellant contends that the trial court failed three times to strictly comply with Maryland Rule 4-215, any one of which would require reversal.

Appellant first points to the court's request for the prosecutor to inform appellant of the charges and maximum penalties, as Subsection (a) requires that the court be the one to give that information to appellant. The State does not contest this contention.

Appellant next contends that the court erred when it permitted the prosecutor to give appellant limited and at times incorrect information without correction. More specifically, the prosecutor advised the appellant that he faced up to 60 years in prison for attempted first-degree murder, when he actually faced life in prison. The prosecutor also did not know whether openly wearing and carrying a dangerous weapon had a fine associated with its maximum penalty of three years. Subsection (a)(3) requires a defendant be advised correctly. Again, the State does not contest this contention.

Finally, appellant contends that the court did not "make certain" that he received a copy of the charging document, which was an indictment, and, by failing to do so, the court violated Rule 4-215(a)(1). The State responds that the record shows that he received a copy of the indictment.

Analysis

Maryland Rule 4-215 provides, in pertinent part:

> (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.
> > (6) If the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel.
>
> The clerk shall note compliance with this section in the file or on the docket.
>
> (b) If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket . . . .

(Emphasis added).

Md. Rule 4-215 seeks to protect a defendant from an unjust result by requiring the court to ensure that he does not unknowingly "relinquish . . . traditional benefits associated with the right to counsel." *Brye v. State*, 410 Md. 623, 634 (2009) (quoting *Faretta v. California*, 422 U.S. 806, 835 (1975)). Strict compliance with Rule 4-215 is required and a failure to comply is not subjected to a harmless error analysis. *Lopez v. State*, 420 Md. 18, 31 (2011).

Md. Rule 4-215(a) expressly provides that "the court shall . . . (3) [a]dvise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any." In support of his first contention, appellant draws a connection to *Webb v. State*, 144 Md. App. 729 (2002). In *Webb*, this Court agreed that in order to strictly comply with Rule 4-215, advisements must be given by "a judge" or "the court." *See id.* at 742-43. Here, the trial court delegated that duty to the prosecutor, requesting that she "tell us what his charges are and what [are] the maximum sentences that [he is] facing," which the prosecutor proceeded to do incorrectly. Appellant was advised that the maximum penalty for attempted murder was "60 years" when it was life imprisonment, which was the sentence he received. Md. Code Ann., Criminal Law § 2-205.

In support of his second contention, appellant cites *Brye*, 410 Md. at 623. In *Brye*, the defendant wished to discharge his attorney in order to speed up the trial process. *Id.* at 629. When the court stated the penalties he faced, the penalties for each of his handgun charges were incorrectly announced. *Id*. at 638. This was held to be reversible

error despite the fact that the defendant was eventually only convicted and sentenced for a charge on which he was given a correct advisement by the court. *Id*. at 641-42. In this case, appellant received a sentence of which he was not correctly advised. *See also Knox v. State*, 404 Md. 76, 88-92 (2008) (holding that the trial court did not comply with Md. Rule 4-215(a)(3) when it failed to advise the defendant of additional penalties he faced as a result of his subsequent offender status and reversing his convictions on that basis); *Parren v. State*, 309 Md. 260, 282 (1987) (holding that noncompliance with Md. Rule 4-215(a)(3) is sufficient basis on which to render a defendant's waiver of counsel ineffective and reverse a defendant's conviction).

As to his third contention, Rule 4-215(a)(1) requires that the court "make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel." It does not require that the court supply a copy. If the defendant received a copy of his indictment papers, the rule is satisfied without the need for a "redundant" question to the defendant by the court. *Muhammad v. State*, 177 Md. App. 188, 250 (2007). Based on our review of the record, it appears that appellant did receive a copy of the indictment.

In sum, because the circuit court committed two errors regarding Rule 4-215, reversal is required.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY REVERSED AND CASE REMANDED FOR A NEW TRIAL; COSTS TO BE PAID BY WICOMICO COUNTY.