

Circuit Court for Calvert County
Case No. C-04-CR-22-000044

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 588

September Term, 2023

PATRICK ALLAN PORTZEN, JR.

v.

STATE OF MARYLAND

Tang,
Albright,
Kehoe, S.,

JJ.

Opinion by Kehoe, S., J.

Filed: February 19, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Appellant, Patrick Allan Portzen, Jr. (Portzen), charged with first-degree assault and related offenses, including several firearms offenses, represented himself in a two-day jury trial starting on March 7, 2023. While the jury acquitted Portzen of first-degree assault, second-degree assault, and use of a firearm in the commission of a crime of violence, they convicted Portzen of possession of a regulated firearm by a prohibited person, wearing/carrying/transporting a handgun in a vehicle, wearing/carrying/transporting a loaded handgun in a vehicle, and possession of ammunition by a prohibited person. On May 12, 2023, Portzen was sentenced to a total of nineteen years' incarceration, all but seven years suspended, with five years' probation. Portzen filed a timely appeal and presents the following question to this court:

1. Did the circuit court err by finding that Appellant waived his right to counsel?

Portzen argues that “the circuit court erred by finding a knowing and voluntary waiver of counsel at the August 22, 2022 and August 25, 2022 hearings, where Appellant never requested to discharge his public defender” and “by finding a waiver of the right to counsel at the March 3, 2023, hearing” by discharging counsel and by inaction. The State argues that “the circuit court correctly found that Portzen discharged his attorneys and waived his right to counsel[,]” and that “Portzen’s appearance in court [on March 3, 2023] without an attorney after discharging two attorneys and expressly waiving his right to counsel demonstrates that he also waived his right to counsel by inaction.” For the reasons discussed *infra*, we agree with the State and affirm the judgment of the Circuit Court for Calvert County.

I. FACTUAL BACKGROUND¹

a. July 13, 2022: Plea Hearing & July 29, 2022: Status Conference

On July 13, 2022, Portzen appeared, represented by private counsel, for a plea hearing. The State placed the plea offer on the record, which was adamantly rejected by Portzen. The court also addressed private counsel's motion to withdraw her appearance in the case. The court struck the appearance of private counsel and provided Portzen with an application for representation by the Office of the Public Defender (OPD). However, the court warned Portzen of his upcoming trial date and that OPD may want a continuance, but the court was not inclined to continue the trial date. Portzen responded, "I'm not asking for a continuance." Private counsel provided all paper discovery to Portzen and the court scheduled a status hearing for July 29, 2022.

When Portzen appeared on July 29, 2022 for a status conference, an attorney from OPD informed the court that the application Portzen filled out and submitted at the last hearing was an old form that is no longer accepted. As a result, Portzen would need to fill out the correct application and resubmit it. The court appointed OPD to represent Portzen without the need for an application. However, the court warned that Portzen would not get to "pick and choose" his public defender, and that they may request a continuance. Another hearing was scheduled for August 8, 2022.

¹ Only the facts relevant to the question on appeal are included. Thus, we've omitted any facts related to the trial and underlying charges.

b. August 8, 2022: Status Conference

Now represented by OPD, Portzen appeared before Judge Mark S. Chandlee for a status conference on August 8, 2022. OPD advised the court that they would not be prepared for trial by August 30th. Portzen previously indicated to OPD that if they were not ready for trial set for the 30th, then he wanted to represent himself because he refused to waive his *Hicks* right to be tried within 180 days.²

[PUBLIC DEFENDER]: [...] We're in a little bit of a pickle. [Public defender] will not be prepared for trial by August 30th. Obviously, this is a serious case, doesn't quite have discovery yet, and we need the opportunity to best prepare a defense for Mr. Portzen.

When [public defender] spoke to Mr. Portzen earlier today, Mr. Portzen had indicated that if -- potentially, if [public defender] was not going to be ready at the time, because he does not waive Hicks, he would want to proceed pro se.

[PORTZEN]: That's correct, Your Honor [...] She said she's got a week off. She said she can look at what's prepared. She can't present it. I'll go forward pro se.

[...]

THE COURT: You understand what that means?

[PORTZEN]: Yes, I do, sir.

THE COURT: Pro se means you wouldn't have an attorney.

[PORTZEN]: Right. I would represent myself.

² The *Hicks* right refers to the rule established in *State v. Hicks*, 285 Md. 310 (1979), in which the court held that failure to commence trial by the statutory deadline (then 120 days) requires dismissal of the case with prejudice, unless the defendant expressly consents, or the court finds good cause shown, to postpone trial beyond the *Hicks* date. *See also Jackson v. State*, 485 Md. 1, 12-18 (2023). Criminal Procedure Article § 6-103 and Maryland Rule 4-271 prescribe a 180-day deadline for trying cases in circuit court. Md. Code Ann., Crim. Proc. § 6-103; Md. Rule 4-271.

The court determined that it would not yet remove the appearance of OPD and scheduled another status hearing for August 22, 2022. Judge Chandlee expressed his concern with Portzen electing to proceed pro se.

THE COURT: [...] Mr. Portzen, I mean, you see I'm dragging my feet a little bit on this because it's so important for you to have an attorney. And I'm going to leave you with this thought. There, you know, here you have this idea of I'm going forward, I'm going forward, I'm going forward, and, look, if you go to trial and you get found not guilty I get it, it's a non issue, right. You're done, you're not guilty on every one of these eight charges, at least, that are pending before the Court.

[PORTZEN]: Right.

THE COURT: But if you go to trial and you get found guilty and then you're looking to go up to the Department of Corrections for 60 some years.

[PORTZEN]: Correct.

THE COURT: You're going to look at me and say, well, wait a minute, Judge, I didn't have an attorney. How was I supposed to compete with the Deputy's State's Attorney who went to law school, who has practiced law, who's had jury trials. Have you ever had a jury trial?

[PORTZEN]: Yes, I have.

THE COURT: And you represented yourself?

[PORTZEN]: No, I never represented myself, but I've been through a jury trial. Yes, sir.

THE COURT: [...] you understand that there are certain -- we'll call them nuances of what goes on procedurally that can protect you and you might not be able to protect yourself even though you think you are [...]

THE COURT: [...] if you saw someone that was getting ready to walk -- drive off a cliff, would you tell them not to?

THE DEFENDANT: I can tell them all I want.

THE COURT: Ah, that's what I'm doing to you, telling you not to do that. It's not a good decision to go in to [sic] a jury trial representing yourself. This isn't some disorderly conduct case.

THE DEFENDANT: Yeah, I know what -- I know what case it is.

THE COURT: I'm -- but the stakes are much higher.

THE DEFENDANT: I'm fully aware of what's going on. I understand what's going on. I'm fully capable of doing this. I can represent myself pro se. That's fine. I'm not going to take the plea deal he's giving. I'm not stepping over my Hicks date. And if she can't represent me, I'll go forward pro se. And if I get found guilty I'll deal with it in Appeals Court. I mean - [...] I'm not taking the plea deal. I'm not taking what he's offering.

[...]

THE COURT: I don't care if you take the plea. What I care about is you having an attorney to represent you in a jury trial where you could be incarcerated for a significant period of time.

THE DEFENDANT: Okay. I understand. Thank you very much, Your Honor.

c. August 22, 2022: Status Conference

Portzen appeared before Judge Chandlee, still represented by OPD, for another status conference on August 22, 2022. OPD reiterated that it would not be prepared for trial on August 30th. Similarly, it was reiterated to the court that Portzen still wished to proceed pro se.

[PUBLIC DEFENDER]: [...] it's my understanding that we've been clear that we're not going to be in a position -- our office [...] to be able to go forward with the trial since we just entered and would not be fully prepared to go to trial, which I believe is set for next week [...] It is my understanding that Mr. Portzen, after [public defender] was speaking to him, still wishes then to proceed pro se.

[...]

THE COURT: Mr. Portzen, what do you want to do? We've had this conversation multiple times where I've told you how important it is to have an attorney. That I would work with trying to reset this sooner but -- than later. But you indicated previously that you wanted to maintain your trial date. Because you fired your private attorney.

[PORTZEN]: That's correct.

THE COURT: And that -- this is why we're in this situation. And I even told you when you got rid of your attorney, who was extremely capable, by the way, but when you did that if the new lawyer, even the Public Defender's Office, I -- you know, you might run into this situation. What -- what do you want to do?

[PORTZEN]: I'm prepared for trial.

THE COURT: But you understand, though, that the Public Defender's Office isn't going to be able to be prepared.

[PORTZEN]: I understand that.

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In response to the conversation between the court and Portzen, the State requested that the court proceed under Maryland Rule 4-215(e) regarding discharge of counsel. Before getting into Rule 4-215(e), the court confirmed whether Portzen wanted to discharge OPD.

THE COURT: Well, Mr. Portzen, do you want the Public Defender's Office to represent you?

[PORTZEN]: They said they can't be prepared. I don't -- if they can't be prepared --

THE COURT: Then you want to discharge them? In other words, fire them as well?

[PORTZEN]: I mean, if they said they can't help me, they can't be prepared. [...]

THE COURT: Mr. Portzen, you know I've been struggling with this. I don't want you to not have an attorney. And the Public Defender's Office will represent you. Your Hicks -- he does have a Hicks date. And I can't -- I'm not inclined to go beyond the Hicks date but I'm also --

THE DEFENDANT: Your Honor, what do you want me to do?

The court tried to explain that it would be willing to briefly postpone the trial date so that Portzen could remain represented by OPD. Portzen refused and stated the only option for him is to proceed to trial pro se.

THE COURT: [...] what I'm saying is [] that I want you to have the benefit of an attorney for the trial. So, your choice is -- and I'll let you make the decision now, do you want the Public Defender's Office to represent you?

[PORTZEN]: If they're going to try to postpone it, I don't need their representation.

THE COURT: Well, they're wanting to postpone it because they want to --

[PORTZEN]: Well, I don't need their representation.

THE COURT: -- be appropriately prepared. So, you are going to discharge the [...] the Public Defender's Office.

[PORTZEN]: Yes, sir.

THE COURT: You're firing them. And you fired your other attorney. You wish to represent yourself?

[PORTZEN]: If they want to postpone, yes, sir, Your Honor.

The court reluctantly began a waiver colloquy. The court, again, attempted to convince Portzen to keep OPD as his counsel and reconsider a postponement.

THE COURT: [...] I don't want to continue this case, not as much as you don't want to continue it, and I get that because you're serving a sentence. But my concern is you're going to make this decision to represent yourself and you're going to expose yourself to a significant period of incarceration.

[PORTZEN]: I understand that.

THE COURT: And I can assure you I'm not going to feel sorry [] because you decided to represent yourself.

[PORTZEN]: I understand that 100 percent.

THE COURT: Because I would continue it for a short period of time in order for the Public Defender to be prepared, but it would be beyond the Hicks date and I would have to find good cause. But I won't make you do it, you give me the final answer. What do you want to do? Keep your trial and represent yourself?

[PORTZEN]: Yes, sir.

THE COURT: I find for the record Defendant's freely, knowingly and voluntarily discharged the Public Defender from their -- Counsel from service in this matter. He has a constitutional right to represent himself. He wants to represent himself. He's going to represent himself. I have exhausted myself and this Court and this time trying to convince the Defendant that he needs the benefit of Counsel. He believes he's going to be able to -- appropriately represent himself --

[PORTZEN]: Yes, sir.

Out of an abundance of caution, the State requested that the court go through Maryland Rule 4-215(a)(1) through (a)(4), to which the court obliged. After exhausting Rule 4-215(a), the court asked Portzen if he wanted to change his mind, to which Portzen replied “[n]o, sir, Your Honor.” The court again found and announced that Portzen knowingly and voluntarily waived his right to counsel, ordered OPD to provide discovery to Portzen, and concluded the hearing. The trial remained scheduled for August 30, 2022.

d. August 25, 2022: Status Conference

Judge Chandler *sua sponte* scheduled another status conference on August 25, 2022 because he was still concerned with Portzen's decision to represent himself. The court began to conduct another waiver colloquy with Portzen. The State interrupted to express its concern on the topic.

[STATE]: [] First of all, on August 22nd the State's recollection is that the Defendant specifically did not say I want to be pro se. I want to discharge my attorney. He said I want an attorney that can -- that can assist me, but I want to be tried before my Hicks date. If the -- and the Public Defender was 100 percent clear they could not do that so the result was not "I want to be pro se," "I want an attorney that can help, because this attorney can't help me, I guess I'm going to be pro se," is the State's recollection.

THE COURT: Well, let me -- let me just clarify that [...] with Mr. Portzen.

MR. PORTZEN: You know, I believe every court date that I've come over here, I said if the attorney is not prepared to represent me in trial that I would go pro se. I believe that were the words that I said out of my mouth.

THE COURT: But I mean you want an attorney but you want an attorney that can be ready --

MR. PORTZEN: No, I never said that. I said if this attorney can not be prepared in time for trial that I would move forward pro se. I never said I guess. I never said I would. I never said none of that. I said I would move forward pro se.

[STATE]: Your Honor, I think that's -- I mean I don't think that's the same thing as saying I'm looking to represent myself pro se.

THE COURT: Well, no, he's -- do you know what pro se means?

MR. PORTZEN: Yes, sir, to move forward without Counsel, represent yourself.

The State requested the court to conduct the Maryland Rule 4-215 inquiry again and announce which modality of waiver of counsel applied here, whether it be by expressed waiver of counsel or waiver of counsel by inaction. The court again discussed with Portzen the disadvantages of proceeding to trial without representation in hopes Portzen would change his mind.

THE COURT: Do you feel that you're at a disadvantage?

MR. PORTZEN: Oh, yeah, I'm definitely at a great disadvantage. But I'm still moving forward.

THE COURT: Well, I've got to ask you why, all right. Because, think about it -- this is part of what's in this rule I'm required to -- lawyers know what the law is, they know what the court procedure is, they know what defenses are and they know how to prepare a defense and they know how to investigate cases. They know how to negotiate with the State. And I know you're not happy with the negotiations by any of the lawyers. I'm not asking you to plead guilty, because every time we have this conversation you [...] think I want you to plead guilty. I don't.

MR. PORTZEN: That's all that's been out of the lawyer's mouth. It's never been nothing about my defense on either side, so [...] it's always been this and this and this.

THE COURT: -- I gave an opportunity for the Public Defender to get into the case and they're saying they're [...] willing to represent you, but they want to be prepared. They have resources where they could get experts and things of that nature that might help you.

MR. PORTZEN: And when I talked to the Public Defender, it was the same thing as [private counsel], this, this and this. They have this and this. I'm fine. I'm fine. She didn't want to hear nothing I had to say, so I couldn't -- there was nothing I could tell her.

THE COURT: Well, so the State's attorney is concerned that you say I want a lawyer, but I want a lawyer that can be ready [...] what are you telling me?

MR. PORTZEN: No, no, no.

THE COURT: Are you telling me you just don't want a lawyer now?

MR. PORTZEN: I'll represent myself pro se. I'll move forward pro se representing myself.

THE COURT: Why? Just tell me why. That's all.

MR. PORTZEN: Why, because the lawyers that I had that -- [private counsel] couldn't represent me the way I wanted to be represented and the Public Defender's Office couldn't represent me the way I want to be represented.

The State provided Portzen with some new discovery materials. Portzen advised he would need time to review the new discovery but assured the court that he would be prepared for trial on August 30th. The court asked if Portzen wanted a continuance.

THE COURT: A lawyer would say I want to review this and be prepared and I'm telling you right now, even if, let's just say you stay representing

yourself. If you said, Judge, I still want to represent myself but I need a continuance to be able to be prepared, I would grant your request for a continuance because I know that you're getting this discovery late, although, to some degree, your own fault because you -- not fault, maybe that's not a good word, but you had [private counsel] and relieved her and then we had to get another lawyer involved, but it would certainly be as a result of your actions. So I probably shouldn't have used the word fault, I would say as a result of your actions this has delayed out the State's ability to get this stuff to you directly.

[...]

MR. PORTZEN: I understand.

THE COURT: All right. If you asked for a continuance and you still wanted to represent yourself, I'd give you an opportunity to do that. I'm telling you that now. Do you want to do that?

MR. PORTZEN: No, I don't want a continuance. No, sir.

THE COURT: Why? I mean you think you can go over all of this and be ready? Have you subpoenaed any witnesses?

MR. PORTZEN: I put a subpoena list down there. I never got nothing back from the Clerk.

[STATE]: I can tell the Court I have not received any witness lists from the Defendant.

MR. PORTZEN: Right. Just like Captain Cross said that there's no way for me to type up motions at the jail.

THE COURT: And exactly. That's why you need help. How are you going to have -- your witnesses aren't going to be able to be here. There's a procedure --

MR. PORTZEN: I can go off of the witnesses that's he's calling. I don't -- I don't -- that's fine. The witnesses that's he's calling is the witnesses that I'm going to cross examine. That's it.

[...]

[STATE]: -- the Defendant knows who the State's potential witnesses are. He doesn't know who the State's calling.

MR. PORTZEN: Whoever's in the discovery. They can call whoever's in it. I'm ready. [...]

Again, the State asked the court to find for the record that Portzen expressly waived his right to counsel under Maryland Rule 4-215(b).

THE COURT: Oh, I believe he's waived counsel and I believed that previously that he waived counsel and wants to represent himself, especially

now. He's indicated that he's not happy with what each of the lawyers have told him. Am I right on that, sir?

MR. PORTZEN: Correct.

THE COURT: And you want to represent yourself? I mean I find he's not under the influence of drugs or alcohol, he's educated. I don't know that he's making the best decision by not pursuing an attorney but he doesn't want an attorney at this point. He's waiving his right to counsel.

MR. PORTZEN: Correct.

[...]

THE COURT: I've told you, though, but I -- in addition to this -- so I find for the record he's freely, knowingly and voluntarily waived his right to counsel. I mean, he's made that clear on multiple occasions. I typically don't do this. I'm bringing you back here because I'm worried about the decision making that you are making, though, sir [...] And now -- you're beyond the issue of an -- I've gone over the penalties, he understands the penalties, he understands the nature of the proceedings that it's criminal, that he's facing mandatory sentences. In fact, he was able to mention the total amount of number of years he could be incarcerated. He's waived counsel. I mean he understands that. He's did -- he's not happy with any lawyer's advice that he's gotten. I am concerned about his ability to represent himself but I'm worried about that with anyone who's not a lawyer.

MR. PORTZEN: Correct. I understand.

The State requested further clarification whether the court followed the requirements of Maryland Rule 4-215(a)(1) on the record. In addition, the lack of Portzen's ability to review electronic discovery while incarcerated was again brought to the court's attention. The court inquired how Portzen was going to represent himself if he could not review the electronic discovery. Portzen replied, "I've been saying for months I'm trying to go pro se. I understand you trying to get me the Public Defender. I understand. But what I'm going off of is what you gave me in paper discovery."

The State continued to request clarification from the court about its compliance with Rule 4-215, specifically sections (a)(2) through (a)(4) and (b).

THE COURT: All right. I've been compliant with subsection (2) which the Defendant is -- [...] -- advised of the importance of counsel [...] We've gone over that ad nauseam on multiple occasions. I've advised the Defendant the nature of the charges in the charging document. He's -- we've gone over the penalties, including mandatory penalties. That's subsection (3). Subsection (4) is conduct a waiver inquiry pursuant to section (b), which I have gone over with him as well. He's made -- and I've made the finding that he's done so freely, knowingly and voluntarily. He's not under the influence of drugs, he's educated, he's not a lawyer -- [...] -- but he has education. He reads, writes, he's indicated he's actually been preparing all the documentation. Subsection (5) is if a -- if trial is to be conducted on a subsequent date advise Defendant if it -- that if the Defendant appears without Counsel the Court could determine that he's waived his right to Counsel. Well, he's waived his right to Counsel explicitly and he knows he's going to be required to represent himself. If he's charged with an offense that carries a penalty of incarceration determine whether Defendant appeared before a Judicial Officer for an initial appearance pursuant to 4-213. He's had multiple hearings including that hearing including status conferences and he's gone through a waiver or a plea rejection process which he freely, knowingly and voluntarily waived the plea offer. He hates the plea offer that was made in this case. I'm not saying that to be funny, sir, but you -- you -- that's the driving force behind this.

The State then asked the court to announce for the record whether the discharge of OPD was for meritorious reasons or not. The court again tried to convince Portzen to accept a continuance to give Portzen more time to review discovery, to which Portzen again rejected.

THE COURT: Well, the meritorious reason is he doesn't see eye to eye with the attorney [...] And he doesn't agree with the advice he's gotten from Counsel. He doesn't have to take the advice of an attorney. He, ultimately, is the one who is potentially going to be incarcerated. I find that it's a meritorious reason [...] That he's not happy with the representation. He doesn't want to be delayed in having a trial because he thinks he can represent himself. I disagree with you on that, sir. I will tell you this, I've told you here on the record multiple times I will continue the case for you to represent yourself so you can be prepared.

MR. PORTZEN: I'm not going to continue the case for months on and months off. I'm not pushing it out for months and months and months. I'm giving up my rights, some of my constitutional amendments.

THE COURT: Okay. But maybe a -- I will say the last ditch effort I'll make to you on that is maybe a couple of months of preparation is to prepare an appropriate defense for yourself is worth withstanding so you don't get years at the Detention Center.

MR. PORTZEN: I understand.

[...]

THE COURT: -- and you still want to go to trial?

MR. PORTZEN: Yes, sir.

[...]

THE COURT: [...] I've found that he waived his right to Counsel freely, knowingly and voluntarily. He wishes to have this matter proceed without Counsel and with somewhat of a lack of a discovery but this member of Defense [sic] has bent over backwards to try and get him to have an attorney, give him a continuance so he can represent himself properly, this is what he wants to do and I'm not -- I'm not going to make you do anything else other than -- hopefully, you'll be good.

Vexingly, the State requested that the court ensure the written record reflect Portzen's waiver of right to counsel, to which the court replied, "this record is [...] rife with my findings [...] of him freely, knowingly and voluntarily waiving his right to Counsel." Finally, the hearing concluded.

e. August 29, 2022: Status Conference

Portzen, pro se, filed a motion on August 29, 2022 requesting to continue his trial scheduled for the following day, August 30th. Judge Mark W. Carmean called the case in for a status conference to discuss the request for continuance. Portzen advised that he was provided with new discovery, including electronic materials, just four days prior and that he needed more time to review said discovery. The State, in objecting to the continuance request, informed Judge Carmean that Portzen was confronted with this same discovery

issue at the last hearing on August 25, 2022 before Judge Chandlee. The State continued to explain that Judge Chandlee gave Portzen an opportunity to request a continuance then in order to review the new discovery, to which Portzen adamantly rejected and assured the court he would be ready for trial on August 30th.

The court advised Portzen that he would have to waive his *Hicks* right to be tried within 180 days. Portzen agreed to do so. A waiver colloquy ensued. When the court asked, “are you expressly waiving that date for purposes of this case?” Portzen replied, “[y]es, for the purposes of the discovery just now being provided five days before Court, sir.” The court found good cause to waive the *Hicks* date and turned to the question of representation. After noting that Portzen previously waived his right to counsel, the court strongly advised him to retain counsel since he now had more time.

The court scheduled a status conference for September 26, 2022 and Portzen confirmed “that should give [him] enough time to go over” discovery. Judge Carmean, like Judge Chandlee before him, explained how counsel would be beneficial to Portzen at trial. There was mention of Portzen possibly retaining another private attorney for his case.

THE COURT: So it sounds like you’re going to try to sell your house and retain private counsel and that’s up to you, but you could also apply for the Public Defender.

MR. PORTZEN: No, sir. That won’t -- I won’t be needing that.

THE COURT: [...] that’s your choice [...] but let me explain. That would be stop gap. You could get a Public Defender, have them involved in the case. If you decide down the road that you want to have private counsel and they’re able to get in the case, the Public Defender will gladly step aside. My concern is let’s suppose you intend to hire private counsel and either the house sale doesn’t go through and you don’t have the funds, or it gets delayed, or you end up wanting an attorney but that attorney is not available on a particular day. Again, it’s up to you whether or not you want to have an

attorney or represent yourself, but just getting a Public Defender now would give them time to get up to speed.

The court asked if Portzen would like to be referred to OPD again, to which Portzen reluctantly agreed. The jury trial for the following date was vacated.

f. September 26, 2022 & October 31, 2022: Status Conferences

Portzen, pro se, appeared again before Judge Carmean for a status conference on September 26, 2022. The court inquired about Portzen's representation, or lack thereof. Portzen explained that he submitted a request slip at the detention center to obtain OPD representation. However, Portzen advised he had not been contacted by anyone from OPD. The court questioned Portzen on the status of obtaining private counsel, to which Portzen indicated he was unsuccessful. The court encouraged Portzen to reapply with OPD.

Before scheduling dates for the jury trial, the court questioned an attorney from OPD whether they received Portzen's request for representation. OPD informed the court that he believed once a defendant discharged OPD, that OPD would not represent that defendant again in the same matter. The State agreed that was their understanding of OPD's policy as well. Regardless, the OPD attorney agreed to check with his office on the status of Portzen's request for representation.

The court revisited the reason for the continuance at the last hearing on August 29, 2022, asking whether the request was for the purposes of obtaining counsel. Portzen corrected the court.

MR. PORTZEN: [...] the reason I wanted to continue the case is because I didn't get all the discovery materials until a couple days before Court. That was the reason why I wanted to really postpone the trial date. It wasn't

because of the whole attorney situation [...] It was because I was just forwarded the rest of the discovery [...] the video footage and everything. And the discovery package through the flash drive on [...] four days before Court [...] They were still faxing over paperwork [...] Monday morning. We had trial Tuesday and they were still faxing over pieces of the discovery.

OPD returned to the courtroom to advise that he had misspoken earlier and that OPD would reenter into Portzen's case, however, that OPD did not receive an application from Portzen. The court advised Portzen to reapply with OPD and Portzen agreed that he would.

Portzen appeared, still unrepresented, before Judge Chandlee on October 31, 2022. Portzen advised the court that he submitted an application to OPD but had not heard anything from them. Judge Chandlee asked Portzen why Judge Carmean continued his trial and whether it was for Portzen to obtain counsel. Portzen corrected the court and advised that the continuance was "because [the State] gave me...discovery the day before. Still faxing over discovery to the jail the day before Court."

The court didn't want to set trial dates in the event Portzen did obtain counsel and the dates didn't work for counsel. The court asked the State to reach out to OPD to see if they were, in fact, reentering in Portzen's case and to follow up with the court to schedule trial dates. The hearing concluded.

g. November 28, 2022: Status Conference

Portzen appeared, still unrepresented, before Judge Carmean for a status conference on November 28, 2022. The court began the hearing by asking Portzen if he was representing himself, to which he replied, "[y]es, sir, Your Honor." After the last hearing,

the State found out that OPD was not going to represent Portzen and informed the court. Portzen confirmed he understood.

Furthermore, the State requested that the court inquire with Portzen whether he intended to hire private counsel or proceed pro se, now that it was clear that OPD would not be representing him. The court began its inquiry.

THE COURT: [] do you still understand that you still have the right to retain private counsel at your own cost? I think at one point you indicated you had someone in mind. There was some kind of a house sale going on. Is that correct? [...] That -- did that ever happen? The sale?

MR. PORTZEN: [...] that's kind of a little shaky situation, but I'll go pro se. That's fine. I know the assignment office was going to set it for January 10th or 11th. We can -- that's fine. March is fine [...]

THE COURT: So you understand [OPD is] not going to enter? If you're going to have representation you're going to have to represent yourself.

MR. PORTZEN: Correct.

THE COURT: All right. And you're waiving your right to have counsel, once again? I know you've done this a million times but we're going --

MR. PORTZEN: I have. Yes, yes.

THE COURT: -- we have to protect records, okay. So if somebody comes back and says Mr. Portzen wasn't probably [sic] advised. They -- we just need to make sure that there's a record. Do you understand that?

MR. PORTZEN: Correct.

The court proceeded to conduct the waive colloquy with Portzen while the State ensured the court complied with Rule 4-215 again.

THE COURT: Do you have any thoughts on if you're going to retain private counsel?

MR. PORTZEN: As of right now I'm going pro se. I was just waiting for the assignment office to kick out the dates. I thought it was going to be in January. March is fine. This gives me more time, but --

THE COURT: All right. But you do understand that you can still get an attorney; they just need to be available for those dates in March. Do you understand that?

18 MR. PORTZEN: Yes, sir, Your Honor.
[...]

THE COURT: And it may not happen. You may represent yourself.

MR. PORTZEN: Yes, sir.

The court finished the waiver colloquy and found that Portzen feely, knowingly, and voluntarily waived his right to counsel.

THE COURT: [] All right. So I went over the fact that you're going to be expected to comply with all the rules of evidence and procedure. I've gone over the fact that the Judge and the State cannot assist you during the trial. And do you understand that by giving up your right to have an attorney if you don't receive the outcome that you want or think is appropriate, you won't be able to complain about that? You won't be able to file an appeal and say, look, I didn't get counsel to represent me. Do you understand that?

MR. PORTZEN: Yes, sir.

[...]

THE COURT: All right. Are you waiving your right to have counsel in the matter freely, knowingly and voluntarily?

MR. PORTZEN: Yes, sir.

THE COURT: All right. And I find that the Defendant is of sufficient maturity and competency to understand what I've just gone over. I know he's gone over it before in the past. It's familiar to him. And I find that his choice is to waive counsel and he's doing so freely, knowingly and voluntarily, therefore, I find that he's waived his right to have counsel both for today and going forward. Obviously, it doesn't preclude you from getting private counsel. You understand that?

MR. PORTZEN: Yes, sir.

A motions hearing was scheduled for February 6, 2023 and the hearing concluded.

h. February 6, 2023: Motions Hearing

A motions hearing was held before Judge Carmean on February 6, 2023. The court first reiterated for the record that Portzen appeared pro se and that he had previously waived his right to counsel. The State indicated that it received a letter from Portzen expressing a desire to enter plea negotiations. The State placed its plea offer on the record and then the court took a recess for the parties to speak with one another. After discussion with the State,

Portzen continued to reject the plea offer. The State's motions were addressed, and a pre-trial status conference was scheduled for March 3, 2023.

i. March 3, 2023: Pre-Trial Status Conference

A pre-trial status conference was held before Judge Chandlee on March 3, 2023. The court started the hearing by noting Portzen's pro se status; "I know that you've had multiple hearings here where you've waived your right to counsel and you're representing yourself in this matter." Portzen responded with, "[y]es, sir." The court asked Portzen if he was prepared for trial that was set to commence on March 7, 2023.

THE COURT: All right. What else did you want to tell me, Mr. Portzen? I mean, you're ready to go to trial, right? [...]

MR. PORTZEN: I mean, I need a little bit more time, but, I mean, if I'm forced to go, I have to go now.

THE COURT: Well, sir [...] you're phrasing it that way like you're being forced to go to trial. You have a trial date that's scheduled [...] And I know before you fought me tooth and nail because you wanted to go forward without a lawyer, you weren't ready, you hadn't seen the discovery, and now you're saying you're not ready.

MR. PORTZEN: Right.

[...]

THE COURT: [...] I mean, you are your own lawyer, by choice, by the way, on this record. [...] if you have something specific to me as to why you're not ready [...] The only way I could continue this is I'd have to find good cause [...] Not just I don't feel like I'm ready because I need to learn more about the law before I go forward. I don't know that that would be good cause because that's kind of an indefinite -- you know, indefinite period of time for you to --

MR. PORTZEN: Correct. All right, well, we're ready to go then. I'm just -- we're ready to go. We just have to go with it.

THE COURT: No [...] I haven't said no yet. All I've said is you have to give me something specific as to why I should continue this, because, by the way, I'm going to listen to the State, just so you know. They may agree or they may disagree and object [...] I want to give you the opportunity to tell me what you want to tell me.

MR. PORTZEN: Oh, no, that's fine. I'm ready. I'm ready [...]

The State asked the court to consider finding that Portzen waived counsel either by express waiver of counsel per Rule 4-215(e) or waiver by inaction per Rule 4-215(d). Furthermore, the State requested that the court find “no meritorious reason” for Portzen appearing without counsel and thus trial shall proceed as scheduled.

THE COURT: Haven’t I made that finding on a couple of occasions, and didn’t Judge Carmean make the similar finding? Are you asking I make the finding again?

[THE STATE]: Well, the Court has certainly made that finding before. I’m not sure if the Court wanted to put that on the record again since -- there was kind of [...] an intimation that he might want to postpone.

[...]

THE COURT: Well, I heard him indicate he might want a postponement, not to obtain counsel, but I’ll ask him. I appreciate you doing -- asking me that. And I’ll do that momentarily [...]

First, the court addressed the State’s motions. Then the court returned to the discussion to Portzen’s waiver of counsel. The parties refreshed the court’s memory on the events that occurred in previous hearings regarding Portzen’s attempt to obtain representation from OPD again and OPD’s ultimate decision declining to represent Portzen due to his discharge of OPD in August of 2022.

THE COURT: [...] you want the Public Defender now, is that what you’re telling me, after going through this, all this?

MR. PORTZEN: I mean [...] I went through that process, but they said that they wouldn’t represent me. I was under the impression --

THE COURT: I mean, have you taken any other steps to hire private counsel?

MR. PORTZEN: I don’t have the means right now for it, so...

THE COURT: I mean, you recall you and myself or Judge Carmean said when you discharge the Public Defender, they’re not going to get back in the case. You recall that, right?

MR. PORTZEN: Right, but I was -- I was dealing with something that was going on with somebody that I was in -- it was just a -- a mess, that’s all. It’s a mess [...]

The court asked the parties if there were any active plea negotiations being discussed, to which the State informed the court of the failed negotiations that took place during the last hearing on February 6, 2023. The court then returned to the discussion to Portzen's efforts or lack thereof to retain counsel.

THE COURT: [...] Mr. Portzen, you agree, though, you haven't -- other than you made the one request to try and re-retain the Public Defender's Office, you've done nothing else to get another attorney, correct?

MR. PORTZEN: Sent out some letters for pro bono to try to get some lawyers to pick up pro bono, but I haven't had any response.

THE COURT: And I understand that your limited means right now [...] But the Public Defender's Office, their policy is that they won't represent, I know that. I mean, I did -- and you were represented by private counsel, I believe [private counsel] [...] was originally the attorney, and you discharged her from her services, correct?

MR. PORTZEN: Well, she kind of discharged me, and I discharged her. It was a money issue.

[...]

THE COURT: But -- and was there another attorney involved? I thought there was --

[THE STATE]: I believe for a short amount of time [public defender] from the Public Defender's Office was involved, and [...] I believe she'd asked for a motion -- she wanted to postpone the case beyond the Hicks date because she had just got in. Mr. Portzen was adamant he didn't want to go beyond Hicks, and that's where we were.

MR. PORTZEN: When I met with her, she pretty much said you're guilty. In a phone conversation, you're guilty, so [...] I mean, I can't [...]

[...]

THE COURT: But I did the -- when he discharged the service of the Public Defender, was I the Judge when that happened? I think I was.

MR. PORTZEN: Mm-hmm.

THE COURT: I mean, I remember going over. I remember going over with you in detail. I said, man, if you do this, they're not going to come back in the case.

MR. PORTZEN: Yes, sir. I was under a different impression from somebody, but it's okay.

THE COURT: Well, that's your problem. You listen to people over at the jail --

MR. PORTZEN: No, from --

THE COURT: -- or on the street who's not a lawyer, and that's -- there you go.

The court took a recess to give the parties one last chance to discuss a possible plea arrangement. However, Portzen continued to reject the State's plea offer.

THE COURT: All right. And you believe previously you rejected that offer. I do find for the record Defendant's freely, knowingly, and voluntarily waived his right to counsel, I mean, through a couple of different ways. He's discharged the service of a private attorney. He's discharged the services of the Public Defender's Office. He was advised that that was going to be problematic for him [...] I understand he has no means, and he's suggested that he would like to consider the Public Defender's Office. There may have been a conversation with one of the assistant public defender's office who said, yeah, maybe we can visit you, but I -- what has been represented to me by the State's Attorney who called directly over to the Public Defender's Office, their policy is, which I'm aware of, [...] once you discharge the Public Defender's Office, they do not take the cases back. So, Mr. Portzen, I find for the record you freely, knowingly, and voluntarily waived your right to counsel by, one, discharging counsel; two, by any inactivity of retaining counsel. I get that you called some [...] asking for some pro bono attorneys to represent you [...] and by the way, any continuance request, I mean, I gave you a couple of opportunities to give me good cause to continue it other than you wanted to study the law more, and I just can't find that that's -- State, you -- will you be objecting to that?

[THE STATE]: Yeah, Your Honor, I would argue that that's not a meritorious reason for either postponing the case or continuing -- or postponing the case for him to get counsel.

THE COURT: I agree, and I deny the request for a continuance as well. Mr. Portzen, you want to go -- but I'm going to tell you right now, if you have any questions, you might as well ask them now.

MR. PORTZEN: No, sir.

The trial commenced as scheduled on March 7th with Portzen representing himself.

II. DISCUSSION

The Sixth Amendment of the United States Constitution³ and Article 21 of the Declaration of Rights of the Maryland Constitution⁴ guarantee defendants in criminal prosecutions the right to assistance of counsel for their defense. U.S. Const. amend. VI; Md. Const. Decl. of Rts. art. 21. If a defendant cannot afford counsel, they are entitled to a public defender or court appointed attorney at the State's expense. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). Otherwise, a defendant has a right to the attorney of their choice if they can afford to hire private counsel. *U.S. v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006).

However, the Supreme Court held in *Adams v. United States ex. Rel McCann*, that the Sixth Amendment also implies a “correlative right to dispense with a lawyer’s help.” 317 U.S. 269, 279 (1942). The Constitution cannot force counsel upon a defendant. *Id.* To relinquish the right to counsel, one must do so freely, knowingly, and intelligently. *Id.* at 275. Thus, a defendant in a criminal matter “may waive [their] Constitutional right to assistance of counsel” but only “if [they know] what [they are] doing and [their] choice is made with eyes open.” *Id.* at 279; *see also Johnson v. Zerbst*, 304 U.S. 458, 468-69 (1938).

Furthermore, the right to counsel enshrined in the Sixth Amendment also grants defendants the right to self-representation. *Gregg v. State*, 377 Md. 515, 548 (2003) (citing

³ The Sixth Amendment of the United States Constitution reads, in relevant part: “In all criminal prosecutions, the accused shall enjoy the right [...] to have the Assistance of Counsel for his defence.” U.S. Const. amend. VI.

⁴ Article 21 of the Maryland Declaration of Rights reads, in relevant part: “That in all criminal prosecutions, every man hath a right [...] to be allowed counsel [...]” Md. Const. Decl. of Rts. art. 21.

Faretta v. California, 422 U.S. 806, 835 (1975)). In reasoning the right to self-representation, the Supreme Court in *Faretta v. California* noted:

[I]t is one thing to hold that every defendant, rich or poor, has the right to the assistance of counsel, and quite another to say that a State may compel a defendant to accept a lawyer he does not want. The value of state-appointed counsel was not unappreciated by the Founders, yet the notion of compulsory counsel was utterly foreign to them. And whatever else may be said of those who wrote the Bill of Rights, surely there can be no doubt that they understood the inestimable worth of free choice.

422 U.S. at 833-34. After warning Faretta that representing himself was a mistake and that he would be required to follow all rules of procedure during trial, the Supreme Court found that Faretta was “literate, competent, and understanding” and that he “clearly and unequivocally” wanted to represent himself. *Id.* at 835-36.

The court need not assess the defendant’s legal proficiency, but rather it must determine that the defendant is “voluntarily exercising his informed free will” to represent himself. *Id.* The court must inform the defendant of the “dangers and disadvantages of self-representation.” *Muhammad v. State*, 177 Md. App. 188, 241 (2007) (citing *Faretta*, 422 U.S. at 835). Therefore, in order to assert one’s right to self-representation, the court must find the defendant knowingly and intelligently waived their right to counsel. *Gregg*, 377 Md. at 548 (citing *Faretta*, 422 U.S. at 835).

a. Maryland Rule 4-215: Waiver of Counsel

Maryland Rule 4-215 provides a roadmap for judges when faced with a waiver of the right to counsel in criminal matters. Md. Rule 4-215. In *Garner v. State*, Judge Charles E. Moylan, Jr. aptly declared:

For a judge to traverse Rule 4-215 is to walk through a minefield. A miracle might bring one across unscathed. For mere mortals, the course will seldom be survived.

183 Md. App. 122, 127 (2008), *aff'd*, 414 Md. 372 (2010). The purpose of Rule 4-215 and its complexity is designed “to protect that most important fundamental right to effective assistance of counsel, which is basic to our adversary system of criminal justice, and which is guaranteed by the federal and Maryland constitutions to every defendant in all criminal prosecutions.” *Garner*, 183 Md. App. at 132 (quoting *Parren v. State*, 309 Md. 260, 281-82 (1987)).

Rule 4-215 allows for the waiver of counsel under three circumstances: 1) express waiver of counsel; 2) waiver by inaction; and 3) discharge of counsel. Md. Rule 4-215(b)-(e); *see also Broadwater v. State*, 401 Md. 175, 181 (2007) (restating that “[t]he right to counsel may be waived expressly, by inaction in the District Court, by inaction in the Circuit Court, or by discharge of counsel.”). The Rule recognizes “that a defendant may waive [their] right to counsel by conduct... either affirmatively or by neglecting or refusing to obtain counsel.” *Gutloff v. State*, 207 Md. App. 176, 194–95 (2012) (citations omitted).

Before a defendant can waive their right to counsel under any of the three circumstances listed *supra*, the court must comply with section (a) of Rule 4-215 or ensure the file notes such compliance. The court must:

- (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.

Md. Rule 4-215(a)(1)-(6). Strict compliance with Rule 4-215 is required and failure to do so mandates reversal of the conviction. *Webb v. State*, 144 Md. App. 729, 741 (2002).

Additional analysis of Rule 4-215 will be included *infra* as needed.

b. Standard of Review

Whether a trial court complied with Rule 4-215 is reviewed *de novo*. *State v. Weddington*, 457 Md. 589, 598–99 (2018). However, Portzen on appeal does not argue that the circuit court failed to comply with the procedural requirements of Rule 4-215, but rather argues that “[t]he central dispute in this case is whether Appellant’s statements to the court constituted a request to discharge counsel.” The circuit court found that Portzen’s statements indicated a desire to discharge counsel and, after applying Rule 4-215, allowed Portzen to discharge OPD. Furthermore, the circuit court found Portzen waived his right to counsel expressly and by inaction after discharging counsel.

We review the circuit court’s findings here for abuse of discretion. *See Felder v. State*, 106 Md. App. 642, 650–51 (1995) (after finding “no failure of compliance with any

of the provisions of Rule 4-215,” the Appellate Court reviewed the trial court’s determination that the defendant waived counsel by inaction for abuse of discretion); *State v. Taylor*, 431 Md. 615, 630 (2006) (the trial court’s determination that the defendant had no meritorious reason to discharge counsel was reviewed for abuse of discretion). In *Felder v. State*, we further noted:

For us to hold that the trial judges in this case abused their discretion when it came to their rulings on that constantly recurring substantive problem could be to create administrative havoc in the system [...] Applying Rule 4-215 to the infinite ad hoc situations that inevitably arise is something that has to be entrusted to the wide discretion of the trial judge.

Id. An abuse of discretion occurs when a court’s decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Hargett v. State*, 248 Md. App. 492, 510 (2020) (quoting *King v. State*, 407 Md. 682, 697 (2009)). Additionally, when “no reasonable person would take the view adopted by the [circuit] court,” an abuse of discretion can be found. *Das v. Das*, 133 Md. App. 1, 15–16 (2000) (citing *North v. North*, 102 Md. App. 1, 13–14 (1994)).

c. The Case Sub Judice: Portzen v. State

On appeal, Portzen asks this Court to determine whether the circuit court erred by finding that he waived his right to counsel. Portzen argues that he never requested to discharge counsel on August 22, 2022 and August 25, 2022. Furthermore, because he did not request to discharge counsel, Portzen argues he cannot be found to have waived his right to counsel by the modality of discharging counsel nor by the modality of inaction. Thus, the heart of the issue here is whether Portzen’s statements constitute a request to

discharge counsel. The State argues that Portzen’s statements to the court in August of 2022 do constitute a request to discharge counsel and, therefore, by failing to obtain counsel after such discharge amounts to waiver of counsel by inaction. In addition, after discharging counsel, Portzen expressly waived his right to counsel, according to the State. We hold that the trial court did not err in finding that Portzen’s statements constituted a request to discharge counsel and that Portzen also expressly waived his right to counsel thereafter. With those findings being dispositive, we need not discuss whether Portzen also waived his right to counsel by inaction.

i. Discharge of Counsel

Our Supreme Court has continuously held that, “any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel” will trigger Rule 4-215(e) on the discharge of counsel. *Gambrill v. State*, 437 Md. 292, 302 (2014) (citing *Williams v. State*, 435 Md. 474, 486–87 (2013) (*Williams II*)); see also *Taylor*, 431 Md. at 634; *State v. Hardy*, 415 Md. 612, 623 (2010). A defendant does not need to use a “talismanic” or “artfully worded” phrase to request the discharge of counsel. *State v. Campbell*, 385 Md. 616, 632 (2005); see also *Leonard v. State*, 302 Md. 111, 124 (1985). Even a “declaration of dissatisfaction with counsel” rather than an “explicit request to discharge” will suffice to require a Rule 4-215(e) inquiry. *Hardy*, 415 Md. at 623. Furthermore, “[w]hen 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.” *State v. Graves*, 447 Md. 230, 244 (2016) (quoting *Gambrill*, 437 Md. at 306-

07); *see also State v. Davis*, 415 Md. 22, 34-35 (2010) (stating, “[a]ny court that fails to follow-up with the defendant following a possible, albeit unclear, Rule 4-215(e) request risks appellate reversal of its judgment. Thus, erring on the side of caution is advised.”).

Here, Portzen successfully discharged his first private attorney on July 13, 2022. However, the discharge of counsel in question is that of OPD, which occurred in August of 2022. Portzen made numerous statements over the course of three separate hearings from which a court could reasonably conclude constituted a dissatisfaction with OPD and a desire to discharge OPD.

The first red flags appeared on August 8, 2022, when OPD advised the court, “Mr. Portzen had indicated that if -- potentially, if [the public defender] was not going to be ready at the time, because he does not waive Hicks, he would want to proceed pro se.” Portzen confirmed, “[t]hat’s correct [...] She can’t present it. I’ll go forward pro se.” After the court tried to dissuade Portzen from discharging counsel, Portzen firmly declared, “I can represent myself pro se. That’s fine. I’m not going to take the plea deal he’s giving. I’m not stepping over my Hicks date. And if she can’t represent me, I’ll go forward pro se.” Our Supreme Court has previously found similar statements sufficient to trigger a Rule 4-215 inquiry. *See Marshall v. State*, 428 Md. 363, 366 (2012) (where defendant stated, “Your Honor I’d like to represent myself.”); *Snead v. State*, 286 Md. 122, 131 (1979) (in response to the court denying defendant’s request for a continuance to hire another attorney, defendant declared “I don’t want no attorney then.”).

The court did not discharge counsel on August 8, 2022, but rather advised Portzen to think about the decision further and the court would readdress the issue at the next hearing. On August 22nd, the court asked Portzen pointedly, “[t]hen you want to discharge [OPD]? In other words, fire them as well?” Portzen replied, “I mean, if they said they can’t help me, they can’t be prepared.” After again trying to convince Portzen he should reconsider discharging counsel, the court asked, “[w]hat do you want to do? Keep your trial [date] and represent yourself?” Portzen replied, “[y]es, sir.” The court then found for the record that Portzen freely, knowingly, and voluntarily discharged OPD, further stating, “[h]e wants to represent himself. He’s going to represent himself. I have exhausted myself and this Court and this time trying to convince the Defendant that he needs the benefit of Counsel.” Portzen affirmed the court’s statement with, “[y]es, sir.”

As stated *supra*, we review for abuse of discretion the trial court’s decision to consider these statements as constituting a desire to discharge counsel. Because we cannot say that such decision is “well removed from the center mark” or that “no reasonable person would take the view” of the court here, we find no abuse of discretion. *Hargett*, 248 Md. App. at 510; *Das*, 133 Md. App. at 15–16. Moreover, when a defendant’s statements are unclear, the court should err on the side of caution and engage in a Rule 4-215(e) inquiry to either confirm or dispel whether a defendant truly wants to discharge counsel. *Graves*, 447 Md. at 244; *Davis*, 415 Md. at 34–35. Alternatively, not finding Portzen’s statements as triggering Rule 4-215(e) would be an abuse of discretion and a reversible error.

Once the court has an inclination that a defendant is dissatisfied with counsel or may desire to discharge counsel, the court must engage in a three-step inquiry, which begins with asking the defendant why they are dissatisfied with counsel or why they wish to discharge counsel. *Hawkins v. State*, 130 Md. App. 679, 687 (2000). Next, the court must carefully consider defendant's explanation and, lastly, determine whether the explanation is meritorious or not. *Id.* Whether an explanation is deemed meritorious or not, guides the court's next steps. If the court determines the reason is meritorious, the court is "obligated to grant the request and give [the defendant] time to retain new counsel." *Joseph v. State*, 190 Md. App. 275, 285 (2010) (quoting *Williams v. State*, 321 Md. 266, 274 (1990) (*Williams I*)); see also *Pinkney v. State*, 427 Md. 77, 94 (2012) (stating, "[i]f the trial judge determines that the defendant's reasons are meritorious, he must grant the defendant's request to discharge counsel.")). If the request is not meritorious, the court may reject the defendant's request or allow the discharge with a warning that the defendant will proceed pro se if they fail to retain new counsel. *State v. Brown*, 342 Md. 404, 425 (1996). This process follows the requirements of Rule 4-215(e), which reads:

(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.

Md. Rule 4-215(e).

If there was any doubt whether Portzen truly wanted to discharge counsel, that doubt was certainly dispelled on August 25, 2022. Still concerned about Portzen's decision to discharge counsel, Judge Chandlee brought the case back for a hearing on August 25th. The State also expressed its concern at this hearing – that it was unclear whether Portzen, in fact, wanted to discharge counsel and represent himself. The State argued, similar to Portzen arguments now on appeal, that Portzen wanted counsel but wanted counsel that could be prepared by his August 30th trial date. The court asked Portzen for clarification:

THE COURT: Well, let me -- let me just clarify that [...] with Mr. Portzen.

MR. PORTZEN: You know, I believe every court date that I've come over here, I said if the attorney is not prepared to represent me in trial that I would go pro se. I believe that were the words that I said out of my mouth.

THE COURT: But I mean you want an attorney but you want an attorney that can be ready --

MR. PORTZEN: No, I never said that. I said if this attorney can not be prepared in time for trial that I would move forward pro se. I never said I guess. I never said I would. I never said none of that. I said I would move forward pro se.

The court continued to press Portzen on the topic, as if the previous dialogue was not convincing enough to conclude Portzen truly wanted to discharge counsel and represent himself:

THE COURT: Well, so the State's attorney is concerned that you say I want a lawyer, but I want a lawyer that can be ready on the -- are you -- what are you telling me?

MR. PORTZEN: No, no, no.

THE COURT: Are you telling me you just don't want a lawyer now?

MR. PORTZEN: I'll represent myself pro se. I'll move forward pro se representing myself.

The State asked the court if it was also finding that Portzen waived his right to counsel. The exchange between the court and Portzen in answering the State's question further confirms Portzen's desire to discharge counsel and represent himself:

THE COURT: Oh, I believe he's waived counsel and I believed that previously that he waived counsel and wants to represent himself, especially now. He's indicated that he's not happy with what each of the lawyers have told him. Am I right on that, sir?

MR. PORTZEN: Correct.

THE COURT: And you want to represent yourself? I mean I find he's not under the influence of drugs or alcohol, he's educated. I don't know that he's making the best decision by not pursuing an attorney but he doesn't want an attorney at this point. He's waiving his right to counsel.

MR. PORTZEN: Correct.

To determine whether Portzen truly wanted to discharge OPD, the court proceeded to the first step of the 4-215(e) inquiry and asked Portzen for an explanation for wanting to discharge OPD. It is clear from the hearings on August 8th and August 22nd that part of the reason was because Portzen did not want to waive his *Hicks* date, but OPD was not prepared and wanted a continuance. However, when the court asked for an explanation on August 25th, Portzen expanded on his previous reasons:

THE COURT: Well, I've got to ask you why, all right [...] And I know you're not happy with the negotiations by any of the lawyers. I'm not asking you to plead guilty, because every time we have this conversation you [...] think I want you to plead guilty. I don't.

MR. PORTZEN: That's all that's been out of the lawyer's mouth. It's never been nothing about my defense on either side, so [...] it's always been this and this and this.

THE COURT: -- I gave an opportunity for the Public Defender to get into the case and they're saying they're -- I believe their position is, they're

willing to represent you, but they want to be prepared. They have resources where they could get experts and things of that nature that might help you.

MR. PORTZEN: And when I talked to the Public Defender, it was the same thing as [private counsel], this, this and this. They have this and this. I'm fine. I'm fine. She didn't want to hear nothing I had to say, so I couldn't -- there was nothing I could tell her.

[...]

THE COURT: Why? Just tell me why. That's all.

MR. PORTZEN: Why, because the lawyers that I had that -- [private counsel] couldn't represent me the way I wanted to be represented and the Public Defender's Office couldn't represent me the way I want to be represented.

We could deduce from this conversation that Portzen's private counsel, as well as OPD, was possibly recommending that Portzen take the State's plea offer, to which Portzen was adamantly opposed. Portzen reported neither attorney could "represent [him] the way he wanted to be represented," they discussed "nothing about [his] defense" with him, and they "didn't want to hear nothing [he] had to say." Thus, contrary to what Portzen now argues, OPD's continuance request was not the only reason Portzen wanted to discharge counsel. Portzen argues before us now that, in his statements to the court, he did not "expose a conflict with his public defender" nor did he "have a problem with the specific lawyer assigned to him" by OPD. Portzen attempts to use this argument to show that he "never requested to discharge his attorney." We disagree with Portzen's contention here. Therefore, we hold that the trial court properly determined that Portzen desired to discharge counsel and gave Portzen ample opportunity to explain the rationale for his request.

After considering Portzen's explanation, the court discharged OPD pursuant to Portzen's request. The State asked the court whether the discharge of counsel was for meritorious reasons, to which the court explained it was.

THE COURT: Well, the meritorious reason is he doesn't see eye to eye with the attorney [...] And he doesn't agree with the advice he's gotten from Counsel. He doesn't have to take the advice of an attorney. He, ultimately, is the one who is potentially going to be incarcerated. I find that it's a meritorious reason [...] That he's not happy with the representation. He doesn't want to be delayed in having a trial because he thinks he can represent himself. I disagree with you on that, sir. I will tell you this, I've told you here on the record multiple times I will continue the case for you to represent yourself so you can be prepared.

The court's rationale for finding that Portzen's request for discharge of counsel was meritorious, further confirmed the full reasoning for the request. Furthermore, we hold that the trial court gave proper consideration to Portzen's explanation, evidenced by the strict questioning employed by the court and the rationale in the court's statement *supra*, prior to discharging counsel.

Again, we review the trial court's merit determination here for an abuse of discretion. *Taylor*, 431 Md. at 615. Part of Portzen's reason was because he did not want to waive his *Hicks* right to be tried within 180 days. Portzen was faced with two competing rights – the right to counsel and the right to be tried within 180 days. While it is clear that the court valued the right to counsel more, Portzen valued his right to be tried within 180 days over his right to counsel. That was his choice. We cannot say that it is an abuse of discretion to force a defendant to forfeit one of their rights in lieu of another, especially when the defendant is clear it values the former right over the latter. *See Muhammad*, 177 Md. App. at 237 (“Cautioning against the excessive protection of one aspect of a right at the expense of a correlative aspect of the right, the Supreme Court admonished that we

must be careful not ‘to imprison a man in his privileges and call it the Constitution.’”) (citing *Adams*, 317 U.S. at 230)).

Furthermore, Portzen was adamant that he represent himself because neither of his attorneys would “represent [him] the way he wanted to be represented.” Again, we see no abuse of discretion in finding this reason meritorious. As we shall see *infra*, defendants have a right to represent themselves.

We reiterate, “[i]f the trial judge determines that the defendant’s reasons are meritorious, he must grant the defendant’s request to discharge counsel.” *Pinkney*, 427 Md. at 94. Furthermore, Rule 4-215(e) indicates that if there is a meritorious reason for discharging counsel, “the court shall permit the discharge of counsel.” Md. Rule 4-215(e). As such, we hold that the trial court did not abuse its discretion in granting Portzen’s request and discharging OPD in this case.

If the court discharges counsel, the court must then “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.” *Id.* Here, Portzen was adamant that the court not continue his trial date. When the discussion of discharging counsel first came up during the hearing on August 8, 2022, Portzen declared, “I’m not stepping over my Hicks date.” Before the court discharged counsel during the hearing on August 25, 2022, the court tried to convince Portzen to accept a continuance so that he could remain represented by counsel, to which Portzen replied, “I’m not going to continue the case for months on and months off. I’m not pushing it out

for months and months and months.” Furthermore, when a court discharges counsel, the “subsequent procedures depend on whether the defendant requests substitute counsel or self-representation.” *Brown*, 342 Md. at 413 (further stating, “[i]t is the relief requested (self-representation) and not the reasons underlying the motion (dissatisfaction with counsel) which governs the trial court’s responsibilities when considering such motions” (citations omitted)). Therefore, we find no abuse of discretion in the court not continuing the trial date after discharging counsel on August 25, 2022.

Furthermore, the court warned Portzen at both hearings on August 22nd and August 25th that if he discharged OPD that he would have to represent himself at trial on August 30th. This concept did not change Portzen’s mind because he had been declaring he wanted to represent himself since the hearing on August 8th. Again, while the court tried one last time to convince Portzen to accept a brief continuance and keep counsel during the hearing on August 25th, Portzen retorted, “I’ve been saying for months I’m trying to go pro se.” For the reasons discussed *supra*, we hold that the trial court complied with Maryland Rule 4-215(e) and did not abuse its discretion in discharging OPD as counsel for Portzen. *See also Brown*, 342 Md. at 413 (“If the defendant requests dismissal of counsel in order to proceed pro se, and if the proposal to discharge counsel is timely and unequivocal, the court must ordinarily grant the request.”) (citing *Faretta*, 422 U.S. at 833–34)).

Portzen on appeal argues, in a footnote, that if the court found a meritorious reason for discharging counsel, the court should have appointed new, non-OPD, counsel for Portzen, citing to our Supreme Court’s opinion in *Dykes v. State*. 444 Md. 642 (2015). We

find that this argument is not adequately briefed as it only appears as one sentence hidden in a footnote. *See Webster v. State*, 221 Md. App. 100, 133 (2015) (“[W]e question whether this argument was properly presented to us considering that, other than a brief citation to the doctrine, appellant has not adequately briefed the issue.”); *see also Bert v. Comptroller of the Treasury*, 215 Md. App. 244, 269 n. 15 (2013) (“Appellant’s ‘argument’ could also be rejected out of hand because it is inadequately briefed.”). While we do not need to address this point, we note that the facts of *Dykes* differ from those in our case *sub judice*.

It is true that our Supreme Court held in *Dykes* that, “[i]f an indigent defendant has discharged appointed counsel for a meritorious reason and the Office of the Public Defender is unable or unwilling to provide new counsel, the trial court may appoint counsel for that defendant pursuant to its inherent authority.” 444 Md. at 670. The key difference in *Dykes* is that Dykes “repeatedly requested the appointment of counsel” over the course of ten pre-trial hearings. *Id.* at 655. Here, Portzen maintained his desire to represent himself upon the discharge of OPD. Where a defendant adamantly and consistently declares he intends to represent himself, rather than repeatedly requesting that the court appoint counsel, the trial court is not required to appoint new counsel.

Portzen also argues per *Dykes*, albeit in a footnote again, that “discharge of counsel for a meritorious reason does not automatically constitute a waiver of the right to counsel.” 444 Md. at 654. While we agree that a meritorious reason for discharge does not equate to a waiver of counsel, the facts before us here again differ from those in *Dykes*. The trial court erred in considering Dykes’s discharge of counsel also a waiver of counsel, “despite

his clear requests for counsel.” *Id.* at 647. The trial court here found that Portzen expressly waived his right to counsel separately from the discharge of OPD. However, even if the court did not find that Portzen *expressly* waived counsel, “[a]t such a point, a trial court may constitutionally require a defendant to choose between proceeding with current counsel and proceeding pro se; the defendant’s knowing and intelligent refusal to proceed with current able counsel has repeatedly been deemed to constitute a voluntary waiver of the right to counsel.” *Fowlkes v. State*, 311 Md. 586, 606 (1988). Discharging counsel five days before trial and refusing to accept a continuance just might be considered “such a point.” However, we hold, *infra*, that the trial court properly found Portzen expressly waived counsel and thus we need not entertain this point further.

In sum, we hold that the trial court did not err in finding that Portzen’s statements constituted a request to discharge OPD as his counsel. We further hold that the trial court complied with Rule 4-215(e) and did not abuse its discretion in discharging OPD as Portzen’s counsel. Lastly, we hold that the trial court properly found Portzen waived his right to counsel, separate from the discharge of counsel waiver.

ii. Express Waiver of Counsel

The right to counsel and the right to represent oneself are “mutually exclusive” and “cannot be asserted simultaneously.” *Leonard*, 302 Md. at 119; *Parren*, 309 Md. at 264. “By choosing self-representation, the defendant forgoes the right to counsel.” *Brown*, 342 Md. at 414; *see also Campbell*, 385 Md. at 627 (“a defendant, by choosing to represent himself, is waiving the right to counsel”). When a defendant indicates a desire to represent

themselves, the court must conduct a two-step inquiry to determine if the defendant “truly wants to do so,” and if so, then the defendant must give a valid waiver of counsel before exercising the right to self-representation. *Snead*, 286 Md. at 128 (citing *Faretta*, 422 U.S. at 817); *Leonard*, 302 Md. at 119.

Our Supreme Court held in *Snead v. State* that, “any statement by the defendant from which the court could reasonably conclude that the defendant desired self-representation would be sufficient” to trigger a Rule 4-215 inquiry. 286 Md. at 127, 131. Like triggering inquiry into the desire to discharge counsel, there is not a “talismanic phrase so as to place the court on notice that [a defendant] desires self-representation.” *Campbell*, 385 Md. at 630 (quoting *Leonard*, 302 Md. at 124). Once a defendant indicates a desire to represent himself, the court must conduct an inquiry. The first step of the inquiry is to determine “whether the defendant ‘clearly and unequivocally’ wants to defend himself. If a defendant makes known to the court, admitting of no doubt or misunderstanding, that he desires to represent himself, the right to do so has properly been asserted.” *Snead*, 286 Md. at 127.

Once satisfied that the defendant truly wants to represent themselves, the court must proceed to the second step of inquiry involving a knowing and intelligent waiver of counsel. A waiver of the right to counsel, “must be in light of the relinquishment of many of the traditional benefits associated with the right to counsel,” as such, “the accused must ‘knowingly and intelligently’ forgo these relinquished benefits.” *Snead*, 286 Md. at 131

(citing *Johnson*, 304 U.S. at 464–65). The defendant must “fully appreciate[] the consequences of proceeding without assistance of counsel.” *Leonard*, 302 Md. at 124.

The United States Supreme Court in *Von Moltke v. Gillies*, which our Supreme Court quotes in *Leonard*, instructs us on the components of a valid waiver.

To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused’s professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances under which such a plea is tendered.

Leonard, 302 Md. at 120 (quoting *Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948)).

Maryland has incorporated these components into its Rule 4–215, which “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.” *Gonzales*, 408 Md. at 529–30 (citing *Johnson*, 355 Md. at 452). Rule 4-215(b) regarding an express waiver of counsel reads:

(b) Express Waiver of Counsel. 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. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof of the defendant's express waiver of counsel. After there has been an express waiver, no postponement of a scheduled trial or hearing

date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.

Md. Rule 4-215(b).

Where a defendant has asserted their right to self-representation and waived their right to counsel, “the trial court must permit him to represent himself.” *Fowlkes*, 311 Md. at 589; *see also Campbell*, 385 Md. at 627. Furthermore, “[a]bsent a recognized exception, refusal to grant a timely, unequivocal request for self-representation is [a] reversible error.” *Brown*, 342 Md. at 413–14; *Snead*, 286 Md. at 130.

In the case before us, Portzen has made several statements to trigger the court to inquire whether he truly wanted to represent himself. The first indication that Portzen may have wanted to represent himself came to light at the August 8, 2022 hearing, when OPD advised the court it would not be prepared for trial on August 30th. OPD further advised the court that that if they requested a continuance, Portzen would want to proceed pro se. Portzen affirmed this statement:

[PORTZEN]: That’s correct, Your Honor [...] She said she’s got a week off. She said she can look at what’s prepared. She can’t present it. I’ll go forward pro se.

[...]

THE COURT: You understand what that means?

[PORTZEN]: Yes, I do, sir.

THE COURT: Pro se means you wouldn’t have an attorney.

[PORTZEN]: Right. I would represent myself.

When the court inquired further, advising that representing himself on such serious charges was not a good idea, Portzen retorted:

I’m fully aware of what’s going on. I understand what’s going on. I’m fully capable of doing this. I can represent myself pro se. That’s fine. I’m not

going to take the plea deal he's giving. I'm not stepping over my Hicks date. And if she can't represent me, I'll go forward pro se. And if I get found guilty I'll deal with it in Appeals Court.

We are satisfied that Portzen's statements made on August 8, 2022 were sufficient to alert the court to Portzen possible desire to represent himself and thus inquiry into such desire was warranted. *See Snead*, 286 Md. at 127, 131 (the court found that the statement "I don't want no attorney then" was sufficient to initiate an inquiry); *see also Leonard*, 302 Md. at 126 (the court found that defendant's "affirmative response to the court's inquiry as to whether he wanted to conduct his own defense was, standing alone, sufficient to trigger an inquiry"); *Marshall*, 428 Md. at 266 ("Your Honor, I'd like to represent myself" was deemed sufficient for inquiry).

The court advised Portzen to reconsider and continued the matter until August 22, 2022, when it inquired again as to the status of Portzen's representation. Again, OPD indicated that they would not be prepared for trial on the 30th and as a result, Portzen still wanted to proceed pro se. The court asked Portzen how he wished to proceed:

THE COURT: Mr. Portzen, what do you want to do? We've had this conversation multiple times where I've told you how important it is to have an attorney. That I would work with trying to reset this sooner but -- than later. But you indicated previously that you wanted to maintain your trial date. Because you fired your private attorney.

[PORTZEN]: That's correct.

THE COURT: And that -- this is why we're in this situation. And I even told you when you got rid of your attorney, who was extremely capable, by the way, but when you did that if the new lawyer, even the Public Defender's Office, I -- you know, you might run into this situation. What -- what do you want to do?

[PORTZEN]: I'm prepared for trial.

THE COURT: But you understand, though, that the Public Defender's Office isn't going to be able to be prepared.

[PORTZEN]: I understand that.

Because Portzen was represented at this point, the court needed to discharge OPD before proceeding with the self-representation inquiry and waiver of counsel. We found, *supra*, that the court properly discharged counsel under Rule 4-215(e). Before officially discharging OPD, the court again tried to explain that it would be willing to give Portzen a brief continuance so that Portzen could remain represented. Portzen repeated that he refuses to accept a continuance and thus the only option for him is to proceed to trial pro se:

THE COURT: [...] I want you to have the benefit of an attorney for the trial. So, your choice is -- and I'll let you make the decision now, do you want the Public Defender's Office to represent you?

[PORTZEN]: If they're going to try to postpone it, I don't need their representation.

THE COURT: Well, they're wanting to postpone it because they want to --

[PORTZEN]: Well, I don't need their representation.

[...]

THE COURT: You're firing them. And you fired your other attorney. You wish to represent yourself?

[PORTZEN]: If they want to postpone, yes, sir, Your Honor.

The court was satisfied that Portzen clearly and unequivocally asserted his desire to discharge counsel and represent himself. We, too, are satisfied and hold that there was a sufficient basis for the trial court to determine that Portzen had waived his right to counsel. Portzen on appeal argues that his statement – “*if* his public defender would not be prepared to represent him at the current trial date, *then* he would represent himself pro se” – did not constitute a desire to discharge counsel and represent himself. We disagree. In *Snead*, the defendant declared “I don't want no attorney then” only after the trial court denied his

request for postponement to hire private counsel. *Fowlkes*, 311 Md. at 601 (citing *Snead*, 286 Md. 122). Our Supreme Court in that case indicated “that a defendant might waive the right to counsel even if his renunciation of any legal representation was simply a fall-back position that he reluctantly adopted.” *Id.* at 600.

The court then conducted a waiver colloquy, complying with Rule 4-215(e). Before announcing the discharge of counsel, the court reiterated its concern with Portzen proceeding pro se:

THE COURT: [...] But my concern is you’re going to make this decision to represent yourself and you’re going to expose yourself to a significant period of incarceration.

[PORTZEN]: I understand that.

THE COURT: And I can assure you I’m not going to feel sorry [...] because you decided to represent yourself.

[PORTZEN]: I understand that 100 percent.

THE COURT: Because I would continue it for a short period of time in order for the Public Defender to be prepared, but it would be beyond the Hicks date and I would have to find good cause. But I won’t make you do it, you give me the final answer. What do you want to do? Keep your trial and represent yourself?

[PORTZEN]: Yes, sir.

THE COURT: I find for the record Defendant’s freely, knowingly and voluntarily discharged the Public Defender from their -- Counsel from service in this matter. He has a constitutional right to represent himself. He wants to represent himself. He’s going to represent himself. I have exhausted myself and this Court and this time trying to convince the Defendant that he needs the benefit of Counsel. He believes he’s going to be able to -- appropriately represent himself --

[PORTZEN]: Yes, sir.

After the court found and announced the discharge of counsel, the State asked the court to separately find that Portzen also waived his right to counsel. As requested, the court conducted a Rule 4-215(b) express waiver of counsel colloquy, subsequently finding

and announcing that Portzen “knowingly and voluntarily waived his right to counsel.” The trial remained scheduled for August 30, 2022.

Even if we found, *arguendo*, that the trial court erred in finding Portzen discharged counsel and waived his right to counsel on August 22nd, that error would have been cured during the hearing on August 25th. While we continue to hold that strict compliance with Rule 4-215 is required and failure to do so is a reversible error, we have also suggested that an error in complying with Rule 4-215 could be cured in some circumstances. *Laser Womack v. State*, 244 Md. App. 443, 470–71 (2020). In *Laser Womack v. State*, we noted:

It would be illogical to hold that a circuit court that fails to strictly comply with the Rule 4-215 minefield prior to a defendant’s discharge of counsel can never remedy that failure, but instead must proceed with a trial that is guaranteed to be reversed on appeal. Rather, we construe Rule 4-215 to permit a court to “cure” an initial failure to comply with Rule 4-215 with subsequent advice to the defendant after the defendant has discharged counsel, but only if the court gives the defendant a chance to reconsider the discharge of counsel after the full advice is given.

Id.

The court revisited Portzen’s decision to waive counsel during the hearing on August 25, 2022. At that hearing, the State expressed its concern that Portzen had not actually indicated that he wanted to represent himself, but rather wanted an attorney that would be ready for trial on the 30th. The court asked Portzen to clarify and he did:

MR. PORTZEN: You know, I believe every court date that I’ve come over here, I said if the attorney is not prepared to represent me in trial that I would go pro se. I believe that were the words that I said out of my mouth.

THE COURT: But I mean you want an attorney but you want an attorney that can be ready --

MR. PORTZEN: No, I never said that. I said if this attorney can not be prepared in time for trial that I would move forward pro se. I never said I

guess. I never said I would. I never said none of that. I said I would move forward pro se.

[STATE]: Your Honor, I think that's -- I mean I don't think that's the same thing as saying I'm looking to represent myself pro se.

THE COURT: Well, no, he's -- do you know what pro se means?

MR. PORTZEN: Yes, sir, to move forward without Counsel, represent yourself.

[...]

THE COURT: Well, so the State's attorney is concerned that you say I want a lawyer, but I want a lawyer that can be ready on the -- are you -- what are you telling me?

MR. PORTZEN: No, no, no.

THE COURT: Are you telling me you just don't want a lawyer now?

MR. PORTZEN: I'll represent myself pro se. I'll move forward pro se representing myself.

When the court and the State were satisfied that Portzen was clearly and unequivocally asserting his right to self-representation, the court conducted a Rule 4-215(b) inquiry again to ensure a knowing and intelligent waiver of counsel. The State then asked the court to find for the record that Portzen expressly waived his right to counsel under section (b) of the Rule. The following exchange ensued:

THE COURT: Oh, I believe he's waived counsel and I believed that previously that he waived counsel and wants to represent himself, especially now. He's indicated that he's not happy with what each of the lawyers have told him. Am I right on that, sir?

MR. PORTZEN: Correct.

THE COURT: And you want to represent yourself? I mean I find he's not under the influence of drugs or alcohol, he's educated. I don't know that he's making the best decision by not pursuing an attorney but he doesn't want an attorney at this point. He's waiving his right to counsel.

MR. PORTZEN: Correct.

[...]

THE COURT: [...] so I find for the record he's freely, knowingly and voluntarily waived his right to counsel. I mean, he's made that clear on multiple occasions. I typically don't do this. I'm bringing you back here because I'm worried about the decision making that you are making, though, sir [...] And now -- you're beyond the issue of an -- I've gone

over the penalties, he understands the penalties, he understands the nature of the proceedings that it's criminal, that he's facing mandatory sentences. In fact, he was able to mention the total amount of number of years he could be incarcerated. He's waived counsel. I mean he understands that. He's did -- he's not happy with any lawyer's advice that he's gotten. I am concerned about his ability to represent himself but I'm worried about that with anyone who's not a lawyer.

MR. PORTZEN: Correct. I understand.

To ensure strict compliance with the Rule, the State asked the court to specifically review and state for the record its compliance with section (a) of Rule 4-215. The court acquiesced.

THE COURT: All right. I've been compliant with subsection (2) which the Defendant is -- [...] -- advised of the importance of counsel [...] We've gone over that ad nauseam on multiple occasions. I've advised the Defendant the nature of the charges in the charging document. He's -- we've gone over the penalties, including mandatory penalties. That's subsection (3). Subsection (4) is conduct a waiver inquiry pursuant to section (b), which I have gone over with him as well. He's made -- and I've made the finding that he's done so freely, knowingly and voluntarily. He's not under the influence of drugs, he's educated, he's not a lawyer -- [...] -- but he has education. He reads, writes, he's indicated he's actually been preparing all the documentation. Subsection (5) is if a -- if trial is to be conducted on a subsequent date advise Defendant if it -- that if the Defendant appears without Counsel the Court could determine that he's waived his right to Counsel. Well, he's waived his right to Counsel explicitly and he knows he's going to be required to represent himself. If he's charged with an offense that carries a penalty of incarceration determine whether Defendant appeared before a Judicial Officer for an initial appearance pursuant to 4-213. He's had multiple hearings including that hearing including status conferences and he's gone through a waiver or a plea rejection process which he freely, knowingly and voluntarily waived the plea offer. He hates the plea offer that was made in this case. I'm not saying that to be funny, sir, but you -- you -- that's the driving force behind this.

Even after finding that Portzen waived his right to counsel, the court made one last attempt to get Portzen to at least accept a continuance to better prepare himself for trial.

Portzen rejected the court's offer for a continuance and the court restated its finding of waiver:

THE COURT: Okay. But maybe a -- I will say the last ditch effort I'll make to you on that is maybe a couple of months of preparation is to prepare an appropriate defense for yourself is worth withstanding so you don't get years at the Detention Center.

MR. PORTZEN: I understand.

[...]

THE COURT: -- and you still want to go to trial?

MR. PORTZEN: Yes, sir.

[...]

THE COURT: [...] I've found that he waived his right to Counsel freely, knowingly and voluntarily. He wishes to have this matter proceed without Counsel and with somewhat of a lack of a discovery but this member of Defense [sic] has bent over backwards to try and get him to have an attorney, give him a continuance so he can represent himself properly, this is what he wants to do and I'm not -- I'm not going to make you do anything else other than -- hopefully, you'll be good. You'll have good luck at the -- at the trial.

Vexingly, the State requested that the court ensure the written record reflect Portzen's waiver of right to counsel, to which the court replied, "this record is [...] rife with my findings [...] of him freely, knowingly and voluntarily waiving his right to Counsel." Finally, the hearing concluded and Portzen was slated to represent himself at trial on August 30th.

From Portzen's statements on August 8th, August 22nd, and August 25th, we are sufficiently satisfied that he clearly and equivocally asserted his right to self-representation. Furthermore, we hold that the trial court here complied with Rule 4-215(b), ensuring that Portzen's waiver of the right to counsel was knowing and intelligent. Whether a waiver of the right to counsel is knowing and intelligent depends, "in each case, upon the particular

facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.” *Parren*, 309 Md. at 272. Here the court specifically found that Portzen was “not under the influence of drugs, he’s educated, he’s not a lawyer -- [...] -- but he has education. He reads, writes, he’s indicated he’s actually been preparing all the documentation.” Similarly, the United States Supreme Court found that Faretta “was voluntarily exercising his informed free will” when the “record affirmatively show[ed] that Faretta was literate, competent, and understanding,” regardless of Faretta’s “technical legal knowledge.” *Faretta*, 422 U.S. at 835–56. We find the record here reflects the same voluntary and informed waiver of counsel.

Nevertheless, after rejecting the court’s offer to continue his case several times, Portzen, pro se, filed a motion on August 29, 2022 requesting to continue his trial that was scheduled for the following day, August 30th. At a hearing on August 29th, Portzen explained that the request was “for the purposes of the discovery just now being provided five days before Court,” and not for the purpose of obtaining counsel. Now that Portzen had more time before trial, the court asked if he would like to be referred to OPD again for representation. Portzen reluctantly agreed to be referred to OPD, after first indicating that “I won’t be needing that.” The jury trial for the following date was vacated and the hearing concluded.

Portzen appeared, still pro se, for a status conference on September 26, 2022. Portzen claimed that he applied for representation through OPD but had not been contacted yet. There was a discussion on whether OPD would represent Portzen again, considering

he had discharged them previously. The court encouraged Portzen to reapply to OPD. Portzen reiterated the reason for his continuance request, which was not for obtaining counsel:

MR. PORTZEN: [...] the reason I wanted to continue the case is because I didn't get all the discovery materials until a couple days before Court. That was the reason why I wanted to really postpone the trial date. It wasn't because of the whole attorney situation [...] It was because I was just forwarded the rest of the discovery [...] the video footage and everything. And the discovery package through the flash drive on [...] four days before Court [...] They were still faxing over paperwork [...] Monday morning. We had trial Tuesday and they were still faxing over pieces of the discovery.

On October 31, 2022, Portzen appeared for a hearing, still unrepresented. Again, Portzen claimed he submitted another application to OPD but did not hear anything from them. The court asked Portzen whether his request for a continuance on August 29th was for the purposes of obtaining counsel. Portzen corrected the court and advised that the continuance was "because [the State] gave me...discovery the day before. Still faxing over discovery to the jail the day before Court." The court asked the State to find out if OPD was going to represent Portzen so that they could schedule trial dates and the hearing concluded.

While it is true that a defendant has a right to revoke a previous waiver of the right to counsel, that right "is not an unqualified right exercisable without regard to the prevailing circumstances in, or posture of, a given case." *Jones v. State*, 403 Md. 267, 291 (2008). Here, Portzen discharged private counsel on July 13, 2022, less than two months before his trial date of August 30th. Then Portzen discharged OPD on August 22nd, just

eight days before trial, because OPD would not, like private counsel before them, “represent [him] the way [he] want to be represented” and he refused to accept a continuance for OPD to be prepared. Furthermore, Portzen was adamant that he represent himself after discharging OPD.

Portzen argues on appeal that he never waived his right to counsel. We disagree and hold that the trial court properly found Portzen waived his right to counsel by August 25th. Thus, we could consider, *arguendo*, that Portzen wanted to revoke his waiver of counsel after his request for continuance on August 29, 2022. However, the “prevailing circumstances” in this case, created by Portzen himself, meant that he no longer had an “unqualified” right to revoke his waiver of counsel. Those circumstances were primarily that OPD will not reenter in a case where they have previously been discharged. Portzen was still free to hire private counsel, as the court informed him on November 28, 2023.

Portzen appeared for a status conference on November 28, 2023, still unrepresented. The court asked Portzen if he was representing himself, to which he replied, “[y]es, sir, Your Honor.” The State informed the court and Portzen that OPD would not be representing Portzen in his case. Portzen confirmed he understood.

The court inquired whether Portzen intended to hire private counsel or proceed pro se, now that it was confirmed that OPD would not be reentering into the case.

THE COURT: [] do you still understand that you still have the right to retain private counsel at your own cost? I think at one point you indicated you had someone in mind. There was some kind of a house sale going on. Is that correct? [...] That -- did that ever happen? The sale?

MR. PORTZEN: [...] that’s kind of a little shaky situation, but I’ll go pro se. That’s fine. I know the assignment office was going to set it for

January 10th or 11th. We can -- that's fine. March is fine. I have the discovery [...]

THE COURT: So you understand [OPD is] not going to enter? If you're going to have representation you're going to have to represent yourself.

MR. PORTZEN: Correct.

THE COURT: All right. And you're waiving your right to have counsel, once again? I know you've done this a million times but we're going --

MR. PORTZEN: I have. Yes, yes.

Satisfied that Portzen was making a clear and unequivocal assertion to waive his right to counsel and represent himself, the court began to conduct another waiver of counsel colloquy under Rule 4-215(b). The court asked Portzen about hiring private counsel again:

THE COURT: Do you have any thoughts on if you're going to retain private counsel?

MR. PORTZEN: As of right now I'm going pro se. I was just waiting for the assignment office to kick out the dates. I thought it was going to be in January. March is fine. This gives me more time [...]

The court finished the waiver colloquy, complying with Rule 4-215(b), and announced that Portzen freely, knowingly, and voluntarily waived his right to counsel.

THE COURT: [] All right. So I went over the fact that you're going to be expected to comply with all the rules of evidence and procedure. I've gone over the fact that the Judge and the State cannot assist you during the trial. And do you understand that by giving up your right to have an attorney if you don't receive the outcome that you want or think is appropriate, you won't be able to complain about that? You won't be able to file an appeal and say, look, I didn't get counsel to represent me. Do you understand that?

MR. PORTZEN: Yes, sir.

[...]

THE COURT: All right. Are you waiving your right to have counsel in the matter freely, knowingly and voluntarily?

MR. PORTZEN: Yes, sir.

THE COURT: All right. And I find that the Defendant is of sufficient maturity and competency to understand what I've just gone over. I know he's gone over it before in the past. It's familiar to him. And I find that his choice is to waive counsel and he's doing so freely, knowingly and

voluntarily, therefore, I find that he's waived his right to have counsel both for today and going forward [...]

Even if we found that Portzen revoked his previous waiver of counsel, the trial court again, and correctly, found that Portzen waived his right to counsel on November 28, 2022. The court began that hearing by asking Portzen if he was representing himself, to which he replied in the affirmative. The court asked if Portzen planned to hire private counsel on two different occasions during the hearing. Portzen replied both times that he will "go pro se." We find that these statements combined with Portzen's statements at previous hearings, are evidence of Portzen's clear and unequivocal desire to represent himself.

The court proceeded to engage in the waiver colloquy under Rule 4-215(b). This was the third time the court conducted the waiver colloquy under Rule 4-215 to ensure his knowing and intelligent waiver of counsel. The trial court found that Portzen was "of sufficient maturity and competency to understand," that "he's gone over it before in the past. It's familiar to him." As such, the court found "that his choice is to waive counsel and he's doing so freely, knowingly and voluntarily," and thus the court also found "that [Portzen's] waived his right to have counsel both for today and going forward." We agree that Portzen knowingly and intelligently waived his right to counsel, again, on November 28, 2022, in accordance with Rule 4-215(b).

At the motions hearing on February 6, 2023, the court first reiterated for the record that Portzen appeared pro se and that he had previously waived his right to counsel, to which Portzen agreed. Motions were addressed and a pre-trial conference was scheduled for March 3, 2023.

Portzen appeared for the pre-trial conference on March 3, 2023. The court started the hearing by noting Portzen's pro se status; "I know that you've had multiple hearings here where you've waived your right to counsel and you're representing yourself in this matter." Portzen responded with, "[y]es, sir." The court asked Portzen if he was prepared for trial on March 7th. Portzen admitted he needed more time but could not provide a good cause reason for a continuance when questioned by the court.

Concerned that Portzen was requesting a continuance to obtain counsel, the State asked the court to find Portzen waived his right to counsel either by express waiver under Rule 4-215(b) or waiver by inaction under Rule 4-215(d). Furthermore, the State requested the court to find "no meritorious reason" for Portzen appearing without counsel and thus trial shall proceed as scheduled:

THE COURT: Haven't I made that finding on a couple of occasions, and didn't Judge Carmean make the similar finding? Are you asking I make the finding again?

[THE STATE]: Well, the Court has certainly made that finding before. I'm not sure if the Court wanted to put that on the record again since -- there was kind of [...] an intimation that [Portzen] might want to postpone.

The court addressed motions before returning to the discussion of Portzen's waiver of counsel. The court asked Portzen if he was requesting OPD representation now. The parties refreshed the court's memory on the events that occurred in previous hearings regarding Portzen's attempt to obtain representation from OPD again and OPD's ultimate decision declining to represent Portzen due to his discharge of OPD in August of 2022. The court asked Portzen what other steps he had taken to secure private counsel. Portzen

advised he could not afford private counsel and that his letters for pro bono representation went unanswered.

The court eventually returned to the State's request to find Portzen waived his right to counsel.

THE COURT: [...] I do find for the record Defendant's freely, knowingly, and voluntarily waived his right to counsel, I mean, through a couple of different ways. He's discharged the service of a private attorney. He's discharged the services of the Public Defender's Office. He was advised that that was going to be problematic for him. And certainly he's done -- he -- I understand he has no means, and he's suggested that he would like to consider the Public Defender's Office. There may have been a conversation with one of the assistant public defender's office who said, yeah, maybe we can visit you, but I -- what has been represented to me by the State's Attorney who called directly over to the Public Defender's Office, their policy is, which I'm aware of, once they're -- once you discharge the Public Defender's Office, they do not take the cases back. So, Mr. Portzen, I find for the record you freely, knowingly, and voluntarily waived your right to counsel by, one, discharging counsel; two, by any inactivity of retaining counsel. I get that you called some -- maybe some -- asking for some pro bono attorneys to represent you, but --

MR. PORTZEN: Right.

THE COURT: -- and by the way, any continuance request, I mean, I gave you a couple of opportunities to give me good cause to continue it other than you wanted to study the law more, and I just can't find that that's -- State, you -- will you be objecting to that?

[THE STATE]: Yeah, Your Honor, I would argue that that's not a meritorious reason for either postponing the case or continuing -- or postponing the case for him to get counsel.

THE COURT: I agree, and I deny the request for a continuance as well. Mr. Portzen, you want to go -- but I'm going to tell you right now, if you have any questions, you might as well ask them now.

MR. PORTZEN: No, sir.

The jury trial proceeded as scheduled on March 7th and 8th of 2023 with Portzen representing himself.

Portzen argues that the trial court erred in finding that Portzen waived counsel at the March 3rd hearing by previously discharging counsel and waiver by inaction. However, we hold that the trial court did not need to find a waiver of counsel by either modality at the March 3rd hearing. As our Supreme Court stated in *Howard v. State*, “[b]y the time that a self-represented defendant requests a postponement to obtain counsel after having expressly waived the right to counsel, multiple procedural safeguards under Maryland Rule 4-215(b) have already protected the defendant.” 440 Md. 427, 443 (2014) (finding in that case that “given that Howard had been properly advised of the right to counsel under Maryland Rule 4-215(b), the circuit court was under no obligation to question Howard further as to his desire to obtain counsel five days later”).

We found that Portzen effectively waived his right to counsel in August 2022 and again on November 28, 2022. Therefore, the court was under no obligation to revisit the Maryland Rule 4-215 question on March 3, 2023, nor was it required to find that Portzen waived his right by discharge of counsel or by inaction.

Portzen on appeal does not argue that the court failed to comply with the procedural requirements of Rule 4-215 and thus, we need not discuss those aspects of the rule here. *Weathers v. State*, 231 Md. App. 112, 133 (2016) (this court omitted a similar discussion when, “[t]here [was] no claim in [that] case that the circuit court failed to comply with the technical requirements of Maryland Rule 4-215(e).”); *see also Webster*, 221 Md. App. at 133 (“[W]e question whether this argument was properly presented to us considering that, other than a brief citation to the doctrine, appellant has not adequately briefed the issue.”);

Bert, 215 Md. App. at 269 n.15 (“Appellant’s ‘argument’ could also be rejected out of hand because it is inadequately briefed.”).

III. CONCLUSION

In *Leonard v. State*, our Supreme Court emphasized that a trial judge must be thorough in determining whether a defendant’s waiver of their right to counsel is done voluntarily and intelligently. 302 Md. at 128–29 (quoting *People v. Lopez*, 71 Cal. App. 3d 568, 571–73 (1977)). The process of making this determination protects the Defendant and the court by assuring that the Defendant’s reasons to exercise their right to proceed pro se have been considered. *Id.*

We find that the circuit court here, with the assistance of the State, went above and beyond to ensure Portzen voluntarily and intelligently waived his right to counsel, and protected the record as such. While we do not say that Portzen was intentionally trying to disrupt the efficient administration of judicial here, his choices alone led to him representing himself. Unfortunately, you cannot have your cake and eat it too, as Portzen wanted to do here. Portzen claims now that he wanted counsel but did not want a postponement for counsel to be prepared. That was an impossibility. If the court denied Portzen’s request to discharge counsel and proceeded to trial without a continuance, Portzen would have an argument on appeal that the court erred in not discharging counsel after his clear request to do so, or that the court violated his right to self-representation. Moreover, if the court denied the discharge request and granted OPD’s request for a postponement, Portzen would call foul that his *Hicks* right to be tried within 180 days was

violated. Regardless of the path taken by the trial court, this case would have ended up on our appellate court's doorstep, unless of course, the jury found Portzen not guilty.

For the reasons stated *supra*, we affirm the judgment of the Circuit Court for Calvert County. We hold Portzen's statements constituted a request to discharge OPD as his counsel. We further hold that the trial court complied with Rule 4-215(e) and did not abuse its discretion in discharging OPD as Portzen's counsel. Additionally, we hold that Portzen knowingly and voluntarily waived his right to counsel in August of 2022 and again on November 28, 2022 in accordance with Rule 4-215(b). With those findings being dispositive, we need not discuss whether Portzen also waived his right to counsel by inaction.

**JUDGMENT OF THE CIRCUIT COURT FOR
CALVERT COUNTY IS AFFIRMED.
APPELLANT TO PAY COSTS.**