

Circuit Court for Howard County
Case No. C-13-CR-21-000322

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1131

September Term, 2022

DONYAH LAMONT GRAHAM

v.

STATE OF MARYLAND

Friedman,
Ripken,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Friedman, J.

Filed: November 7, 2024

* 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 MD. R. 1-104(a)(2)(B).

Maryland Rule 4-215(e) governs the discharge of counsel in a criminal trial. Because the application of this Rule was triggered but not followed, we reverse the conviction and remand for a new trial.

FACTS

Because of our resolution of this case, we need not discuss the facts of the underlying charges. For present purposes, it is enough to note that Donyah Graham was charged with attempted first-degree murder and a variety of other related charges. On November 9, 2021, the circuit court held a pre-trial status hearing. We have reproduced the relevant portion of the transcript of that hearing, below:

Defense Counsel: Mr. Graham has a question of Your Honor. I've discussed with – I don't believe it has any bearing on culpability. So, if Mr. Graham wishes to ask, I don't have any advice against it.

Graham: How are you doing, Your Honor?

The Court: I'm OK. How are you?

Graham: I'm doing fine. My main preference is that with this Defendant, this Public Defender that I have, I don't feel like we have the right trust to whereas though he's defending me to his best abilities. So, as of right now, I look at him as the prosecutor. And I was wondering if I could get appointed another public defender.

The Court: OK. Let me just tell you: I've known Mr. Speert^[1] for many years. He's a very good attorney. He's a very good defense attorney. But I will also acknowledge there [are] over thirty thousand lawyers in the State of Maryland, and you may not get along with any one of them. I have no control over the assignments of the Public Defender's Office, but I will tell you, my

¹ This refers to Joshua Speert, Esq., of the Office of the Public Defender who was Graham's lawyer at the time of the status hearing and at trial.

understanding is, based on their policy, they're not going to reassign you another public defender.

I do not have the authority to tell them who they can or cannot assign[] to a specific case. Plain and simple. You may not get along, or you may not like Mr. Speert, which is unfortunate, but like I said, he's a very good attorney. He appears before this Court on a regular basis. But you have a right to any attorney that you seek (inaudible) to represent you. So, if you don't like Mr. Speert, please feel free to go out and hire someone else. I do not have ... the authority to appoint a public defender for you. That's from their office. But from what I know, over the years, if you get rid of Mr. Speert, their office is out of it. Plain and simple.

Graham: OK, Your Honor.

The Court: I can't control that. I can't control that.

Graham: I'm not saying that we have problems. I feel as though he's not defending me to his best abilities. But I fully understand what you're saying, Your Honor.

The Court: Oh, yeah. No, no. I mean, that's fine. You're entitled to that opinion. I mean, you may hire a private attorney and spend whatever it's going to cost you and then realize, oh, "he's not doing what I want anyway," [or], "I think he can do something else." I can't tell you how to go about dealing with your attorney.

Graham: Thank you.

The Court: But I'm just saying Mr. Speert is very, very competent - is very good. But you (inaudible) to agree. Plain and simple. That's just a fact of life. You know? You don't trust him? Get someone else and move on. If you can. OK?

Graham: Thank you, Your Honor.

The Court: All right. Thank you, Mr. Graham. We will see you ... in January.

Defense Counsel: Mr. Graham, do you have any additional questions of the Court? OK. Just want to make sure your question was answered.

The Court: All right. Have a good day. Thank you.

The case proceeded to trial during June of 2022, at which a jury acquitted Graham of the attempted first-degree murder and several other charges but convicted him of two counts of first-degree assault and two counts of use of a handgun in a crime of violence. He was sentenced to a significant term of incarceration. This timely appeal followed.

ANALYSIS

The sole question that we need to address in this appeal is whether Graham’s statements of dissatisfaction with counsel were sufficient to trigger the application of Maryland Rule 4-215(e).² We review this issue without deference to the circuit court. *Williams v. State*, 435 Md. 474, 483-84 (2013).

Graham argues that his statements that, “I look at [defense counsel] as the prosecutor,” and “I feel as though he’s not defending me to the best of his abilities,”³ were

² In formulating the question presented as we have, we are acknowledging two important limitations. *First*, the State of Maryland has argued only that Rule 4-215(e) was not triggered. The State makes no claim, nor could it, that if the Rule was triggered, that the circuit court complied with the Rule. Thus, the sole question here is whether the Rule was triggered. *Second*, Graham also argues that the circuit court erred by declining to ask a specifically requested voir dire question related to the presumption of innocence. Because we will reverse and remand for a new trial based on the discharge of counsel question, we need not and do not answer the voir dire question, especially as the issue may well not recur at the retrial.

³ We note that Graham’s statement that he believes that defense counsel is not representing him to the best of his abilities, also calls into question our understanding of an earlier statement by Graham. Specifically, the transcript reports Graham to have said, “I don’t feel like we have the right trust to *whereas though* he’s defending me to his best abilities.” (Emphasis added). Initially, we read this statement as saying that although they didn’t trust one another, Graham believed that Speert was doing his best to defend him. In context, however, we think it much more likely that Graham intended to say that because they didn’t trust each other, Speert wasn’t doing his best. This statement, properly understood, also compels judicial inquiry.

sufficient to trigger application of the Rule. The State, by contrast, argues that Graham merely asked, “a question regarding the assignment process at the Public Defender’s Office and whether he could have ‘another public defender.’”⁴ This type of inquiry, the State insists, is insufficient to trigger the application of the Rule.

The Rule itself provides little guidance. It says only that its operation is triggered “[i]f a defendant requests permission to discharge an attorney whose appearance has been entered.” MD. R. 4-215(e); *Williams*, 435 Md. at 486 (discussing that neither the text of the Rule nor its adoption history define what is sufficient to constitute a “request”). Case law, however, has clarified that there are no magic words that a defendant must recite to signify a desire to discharge counsel. *See, e.g., Williams*, 435 Md. at 486-88 (discussing cases decided under current and predecessor Rule). Rather, the Rule is triggered “by *any* statement from which a court could reasonably conclude that the defendant may be inclined to discharge counsel.” *Id.* at 486-87 (emphasis added). Moreover, if trial courts are unsure if a defendant’s statements reflect a desire to discharge counsel, the appropriate judicial response is further inquiry, not a soliloquy.⁵ *See Gambrill v. State*, 437 Md. 292, 305 (2014) (“Although Gambrill’s request to hire a new attorney ... may not have been a paradigm of

⁴ We note that the State’s formulation here is a little disingenuous. It was defense counsel, not Graham, who repeatedly characterized Graham’s request as a “question.”

⁵ Worse still, the trial court’s discussion of the consequences of Graham discharging counsel was inaccurate. A full recitation would have informed Graham that if he sought to discharge counsel, the court would then ask his reasons for the discharge. MD. R. 4-215(e). If the court found his reasons to have been non-meritorious, Graham would have had to hire private counsel or represent himself at trial. *Id.* If, however, the court found his reasons for discharging counsel to have been meritorious, the OPD would have been required to provide substitute counsel. *Dykes v. State*, 444 Md. 642, 668-69 (2015).

clarity, its inherent ambiguity did not relieve the judge of his obligation to comply with Rule 4-215(e); its ambiguity mandated judicial inquiry followed by a determination.”).

We hold that Graham’s statements that he “look[ed] at [defense counsel] as the prosecutor,” and “[felt] as though [defense counsel is] not defending me to the best of his abilities,” were sufficient to trigger the application of Maryland Rule 4-215(e). Once the application of the Rule is triggered, it must be complied with. Failure to do so results invariably in reversal of the conviction and remand for a new trial. Because of the constitutional rights involved, there is no other choice.

**JUDGMENTS OF THE CIRCUIT
COURT FOR HOWARD COUNTY
REVERSED. MATTER REMANDED
FOR NEW PROCEEDINGS NOT
INCONSISTENT WITH THIS
OPINION. COSTS ASSESSED TO
THE STATE OF MARYLAND.**