

Circuit Court for Washington County
Case No. C-21-CR-22-000277

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1152

September Term, 2022

BRIGHT OGUERI

v.

STATE OF MARYLAND

Graeff,
Arthur,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: March 13, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

When a defendant, on the morning of trial while in the courtroom and just before the *voir dire* of prospective jurors, makes a request to discharge the Assistant Public Defender appointed to represent the defendant, the trial court judge enters into the murky world of Maryland Rule 4-215. We have previously described the challenges presented to a trial court judge considering a verbal motion at the advent of trial as a walk through a proverbial minefield: “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.” *Garner v. State*, 183 Md. App. 122, 127 (2008).

Appellant Bright Ogueri (“Ogueri”) was charged with two offenses while an inmate at Maryland Correctional Institution in Hagerstown. At the outset of the trial proceedings in the Circuit Court for Washington County, Ogueri’s appointed Public Defender alerted the court that Ogueri wanted to discharge his present counsel and acquire substitute representation from the Office of the Public Defender (“OPD”). After two long exchanges between Ogueri, his counsel, and the trial court, Ogueri proffered two main reasons for requesting discharge of counsel: (1) that counsel had not contacted Ogueri prior to the morning of trial; and (2) that “this guy right here just gives me the creeps, that’s all.”

The court ultimately denied Ogueri’s request after considering whether Ogueri had presented a meritorious reason to proceed without counsel, not whether he had presented a meritorious reason to discharge counsel. The court also denied a request for a continuance from Ogueri himself to try and obtain a different Public Defender, after which the court confirmed with defense counsel that OPD would not provide another attorney.

Ogueri now appeals both rulings after being found guilty on one of the two counts and presents the following questions on appeal:¹

1. Did the trial court err in failing to comply with Md. Rule 4-215(e) after Mr. Ogueri requested permission to discharge his attorney?
2. Even if the trial court had complied with Rule 4-215(e), would a finding that there was no meritorious reason to discharge counsel have been an abuse of discretion?
3. Assuming, *arguendo*, that the trial court complied with Rule 4-215(e), and further assuming that a finding that there was no meritorious reason to discharge counsel would not have been an abuse of discretion, did the trial court abuse its discretion in denying Mr. Ogueri's request for a continuance?

For the reasons described below, the trial court judge did not follow the requirements of a Rule 4-215(e) inquiry for discharge of counsel. Accordingly, we must reverse Ogueri's conviction and remand for a new trial. Because we reverse on the first question presented, we do not address the second and third.

PROCEDURAL HISTORY

Ogueri was charged in the Circuit Court for Washington County with two counts relating to his confinement in a correctional facility. Ultimately, after waiving a jury trial, Ogueri was found guilty on one count of possessing contraband while confined to a

¹ The State framed its Questions Presented as:

1. Did the trial court properly comply with Rule 4-215 on the morning of trial?
2. Did the trial court properly exercise its discretion in denying a morning-of-trial request for a continuance from the defendant himself?

correctional facility and was acquitted on one count of possessing a weapon while confined to a correctional facility.²

The issues on appeal arose at the commencement of trial on September 1, 2022, when defense counsel alerted the court that Ogueri would “like to represent himself.” Ogueri then contested defense counsel’s characterization of his desires regarding counsel:

DEFENDANT OGUERI: Your Honor, I didn’t say that. I said that I need a new Public Defender. This guy [defense counsel] has not contacted me. I don’t know nothing about my case.

* * *

DEFENDANT OGUERI: He didn’t call me. He didn’t check on me. He didn’t write me, nothing.

* * *

DEFENDANT OGUERI: I need somebody else who is competent about what’s going on with my case.

Following Ogueri’s correction of defense counsel’s statement, the court stated, “So, the defendant is not requesting to discharge counsel,” before attempting to move on with jury selection proceedings. Defense counsel again sought to clarify Ogueri’s wishes, and the following colloquy ensued:

[DEFENSE COUNSEL]: Your Honor, he does wish to strike the Public Defender. And again, I don’t know if the Court wants to inquire again.

THE COURT: Listen, the way this works is if the defendant requests permission to discharge counsel whose appearance has been entered. The Court shall permit the defendant to explain the reasons for the request. The way this starts is he tells the Court he wants to fire the Office of the Public Defender.

² The item at issue was a razor blade attached to a 3 ½ inch piece of plastic.

[DEFENSE COUNSEL]: And he'll answer that question with yes, if you ask him.

THE COURT: I'm not going to ask him. He's got to tell me. Do you want to fire the Public Defender's Office?

DEFENDANT OGUERI: Him [defense counsel], yes.

THE COURT: But not the Office of the Public Defender?

DEFENDANT OGUERI: No.

THE COURT: Okay, then we're done.

[DEFENSE COUNSEL]: Thank you, Your Honor.

THE COURT: So, that is . . . the first step is, you know, him saying he wants to fire attorney of record. And he has not taken the first step. So, I don't . . . have to ask any other questions.

[DEFENSE COUNSEL]: Thank you.

THE COURT: If . . . you want to take a look at the Rule and if it says something different to you, I will stand corrected. I'm happy to . . . learn. But, you know, I'm looking at black letter law that says the first step . . . is the defendant saying I want to fire the lawyer and that has not happened. . . .

The court took a short recess of approximately 15 minutes, then proceeded to discuss *voir dire* procedures with the parties before defense counsel asked to approach. A bench conference with both defense counsel and Ogueri followed:

[DEFENSE COUNSEL]: Your Honor, I just want to reserve his constitutional right to protect himself. He does, he did tell me he wishes to fire the office. He then has an inquiry to make after that. But I let him know that he has to make that election --

THE COURT: Yes.

[DEFENSE COUNSEL]: -- and use that diction. So, sir, at this time what would you like to do?

DEFENDANT OGUERI: Yes, sir, Your Honor, how you doing, first of all? I am a little bit incompetent on how the law works a little bit. But I will say is this guy right here has not given me my motion or discovery. He has not called me to discuss my case like most lawyers will and that worries me. I'm going into trial with somebody that hasn't done anything or making me some offers. I'm not comfortable with this guy. Can I please get an extension so I can request for a different person? Public defender.

THE COURT: Okay, so, so, I still have not -- you want to fire the Office of the Public Defender and have a continuance to hire your own attorney? Do you have the wherewithal to hire your own attorney?

DEFENDANT OGUERI: Not to my knowledge, no I don't.

THE COURT: Okay.

DEFENDANT OGUERI: But at least if this guy right here just gives me the creeps, that's all.

THE COURT: Okay, all right.

DEFENDANT OGUERI: And he has not, he has not written me, not even a letter. I asked him, why didn't you come see me? It was COVID. Okay, what about the face call? What about the phone time? I know the jail cannot deny me phone calls to call me. He could have -- he never done none of that. Not a letter, not a phone call. So, what are we doing here today? I don't even know what we're doing.

The court then briefly explained the right to effective assistance of counsel, which Ogueri stated he was aware of, and the opportunity to challenge ineffective assistance on appeal. The conference continued:

THE COURT: I have asked you repeatedly and your counsel has asked you whether you want to fire the Office of the Public Defender. You have very clearly stated that it's not that you want to fire the Office of the Public Defender, that you want a different Public Defender or Assistant Public

Defender than [defense counsel]. The Court understands that, and it has no control over which Public Defender is assigned to you.

* * *

THE COURT: So, this is, this is where we are. We are going to trial today. I have because the -- your counsel has not asked for a continuance. There is no motion to continue before the Court because you have not asked to discharge the Office of the Public Defender . . . there is no motion to discharge counsel before the Court. If there's any other motions that wish to be made the Court will certainly entertain them. But I'll ask [defense counsel] that.

[DEFENSE COUNSEL]: Your Honor, I have no motions for the Court. I'm going to inquire one last time. Sir, I'm not going to ask the Court to come back up again. If you tell me you want to fire the Office of the Public Defender you need to say that out loud. So, at this point in time do you wish to fire the Office of the Public Defender and then make the motions that you wish?

DEFENDANT OGUERI: Yes.

THE COURT: All right. So, here's -- now that the defendant has expressed that he wishes to fire the Office of the Public Defender, you asked him -- what happens is you asked this Court for its permission to discharge the Office of the Public Defender. You have done so. Now tell me why you want to fire the Office of the Public Defender.

DEFENDANT OGUERI: Because this guy has not done what any representative should have done, like talk to me about any offer that's been made. Or write me and discuss my case and let me know what the pros and cons in this case would be and give me a chance to just telling him my side of the story of what actually happened. He doesn't know my side of the story of what happened.

THE COURT: Okay.

DEFENDANT OGUERI: He just, you know, all he got is just the paper of the charges that was given to him and with a case as serious as this one, I feel that at least I would have gotten a phone call, at least a letter from him or something and none of this was done and that's why I feel that I don't think he's going to be an effective lawyer on my behalf. So, I'm just, I guess I'm

going to just take a chance to get through today and then appeal it. I'd rather do that then have this guy (unintelligible).

* * *

THE COURT: Okay. Well thanks for explaining that. The Court finds and believes that [Ogueri] would be better represented by [defense counsel] than by himself understanding that he would have to go to trial today. He would have to find a meritorious reason that it would be better. This defendant has asserted his right to counsel. He's hired the Public Defender. He's gotten [defense counsel] such as he is. He's disappointed in the, in the representation.

So, the question before this Court is whether it would discharge [defense counsel] and send this defendant before a jury without counsel. And to weigh that . . . in relation to the fact that this defendant has asserted his right to have a lawyer, which patriots have fought and died for, and he wanted a lawyer. He got the Public Defender and he's disappointed in the interaction from [defense counsel] and then he's scared.

The Court does not find that is a meritorious reason to have him proceed without a lawyer today having not made this motion previously. . . .

The court then sought to clarify Ogueri's statement that defense counsel had not "talk[ed] to [him] about any offer that's been made." Upon the court's direction and outside of the judge's hearing, the prosecutor then told Ogueri and defense counsel of the status of any offers from the State, and the parties had a discussion off the record. Defense counsel again asked the court to consider Ogueri's request to represent himself, independent of the court's finding of a non-meritorious reason to discharge counsel. The court explained its position regarding Ogueri's competency and conducted inquiries regarding waiver of counsel:

THE COURT: I understand. . . . I am looking at several cases in anticipation of this and I appreciate your interest in asserting your client's right to represent himself. But the Court . . . believes that the defendant has asserted

his right to be represented by hiring the Public Defender and that the process is — can be reinforced by advising him of what a lawyer means and that he is in fact waiving it. I will read him the Rule.

* * *

THE COURT: And you want to be represented by a lawyer?

DEFENDANT OGUERI: Yes, sir.

THE COURT: Okay. So he's not waiving his right to counsel.

* * *

THE COURT: And I, you know, I think that that's . . . what I ascertained, and he doesn't you know, you don't want to waive your right to a lawyer, right? You want a lawyer, right. That's what he said. So, he wants a lawyer and we're not discharging you and he can't afford one. So, there we are. . . . I agree with you that he has a, has a constitutional right to represent himself. But that's not what he's expressed. He's expressed that he wants the Public Defender, and he doesn't want you. Not an option I have. If you want to get him a different Public Defender . . . the Court would be very open to that, but I don't think that's how this works. Okay?

[DEFENSE COUNSEL]: Being put in that position, Your Honor, I think I now have to ask for a postponement to inquire if I can get another Public Defender.

THE COURT: Okay, well why don't you just call the office? . . . [W]e'll, you know, see if we can get another Public Defender over here.

[DEFENSE COUNSEL]: [I] can get an answer by phone call. We had a discussion yesterday in a staff meeting that I should call and make the inquiry. I know what the answer will be.

THE COURT: Okay.

[DEFENSE COUNSEL]: Because he's —

THE COURT: . . . what do you think the answer will be?

[DEFENSE COUNSEL]: The answer is no.

THE COURT: That's what I thought it would be too. I mean you're short staffed and if you wish to make a motion to, to continue because of some steps you're going to take I will entertain the [defense's] motion. . . .

Defense counsel then requested a 5-minute continuance to call OPD to see if another Public Defender could be assigned to Ogueri, which the court granted. The court then called another case while defense counsel made the call to OPD. When Ogueri's trial reconvened, defense counsel reported that OPD had responded in the negative, and the case proceeded without a change in counsel. Ogueri, still represented, waived his right to a jury trial and after the court's inquiry regarding that waiver, the court recessed for an hour for lunch before reconvening. Ogueri was ultimately found guilty on one of the two counts charged. He timely appealed.

THE PARTIES' CONTENTIONS

The primary issue on appeal is whether the court complied with the requirements of Rule 4-215(e). Ogueri argues that the trial court erred because it believed that the Rule was not triggered by Ogueri's wish to discharge his specific Public Defender and not the whole of OPD. To this end, Ogueri contends that the court failed to make the requisite inquiries under Rule 4-215(e) and its precedent and then failed to make a decision about the meritoriousness of Ogueri's reasons for discharging counsel. Ogueri further avers that, had the court reached the meritoriousness issue, it would have abused its discretion if it found Ogueri's reasons were without merit. Finally, Ogueri asserts that even assuming the court properly complied with Rule 4-215(e) and properly found no meritorious reason for discharge, the court nonetheless erred in denying Ogueri's request for a continuance.

For its part, the State does not contest that Rule 4-215(e) was triggered. Instead, the State contends that the trial court’s inquiry about Ogueri’s desire to discharge counsel was sufficient for the purposes of Rule 4-215(e) because the court was not required to make explicit findings, nor did it need to ask Ogueri questions he had already answered on his own accord. The State further argues that the court’s implicit meritoriousness determination was not an abuse of discretion because the court was entitled to credit or not credit Ogueri’s claims and reasonings for wanting to discharge his counsel. As to Ogueri’s argument that he should have been granted a continuance, the State asserts that the court was correct in declining to consider a motion made by a represented party because Maryland does not allow hybrid representation.

DISCUSSION

A. Rule 4-215(e) Compliance

Case law interpreting Rule 4-215 has consistently held that its provisions are mandatory and require strict compliance. *Pinkney v. State*, 427 Md. 77, 87 (2012). As such, a trial court’s noncompliance with Rule 4-215 “constitutes reversible error.” *Id.* at 88. When examining compliance, a reviewing court utilizes a *de novo* standard of review. *State v. Graves*, 447 Md. 230, 240 (2016).

Maryland Rule 4-215(e) (“Discharge of Counsel—Waiver”) states in full:

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 Rule³ if the docket or file does not reflect prior compliance.

Rule 4-215(e) requires strict compliance when a request to discharge counsel is timely, meaning it is “made before ‘meaningful trial proceedings’ have begun.” *Hargett v. State*, 248 Md. App. 492, 502–03 (2020) (quoting *State v. Brown*, 342 Md. 404, 423 (1996)). The Supreme Court of Maryland has declined to adopt a *per se* rule of when a request is untimely but has held that “Rule 4-215 applies up to and including the beginning of trial.” *Brown*, 342 Md. at 428.

In *Dykes v. State*, the Supreme Court broke down the Rule’s requirements. 444 Md. 642, 652 (2015). When the Rule is triggered, the defendant must first explain their reasons for wanting to discharge counsel, and the court can ask both the defendant and their counsel about their perceptions of the need for discharge. *Id.* After the court hears the defendant’s explanation, the court then decides whether the reasons presented are meritorious. *Id.* While the Rule itself does not define meritoriousness, the Supreme Court has equated it with “good cause.” *Id.* (citing *Gonzales v. State*, 408 Md. 515, 531–33 (2009)). The

³ Subsection (a) of Rule 4-215 governs a defendant’s first appearance without counsel, and Rule 4-215(a)(1)–(4) requires the trial judge to ensure the defendant has received a copy of the charging document, to inform them of the right to counsel, to advise the defendant of the nature of the charges, and to inquire as to waiver of counsel if the defendant indicates that they would like to waive counsel.

court's next step depends upon whether it has found the reasons for discharge meritorious. If the court finds that the reasons have merit, it must permit discharge, continue the action if necessary, advise the defendant that they will proceed unrepresented if new counsel is not obtained, and conduct further proceedings if required by Rule 4-215(a). *Id.* Conversely, if the reasons are not found to have merit, the court must advise the defendant that the trial will proceed as scheduled, advise the defendant that they will be unrepresented if counsel is discharged and new counsel is not obtained, and conduct further proceedings if required by Rule 4-215(a). *Id.* at 653.

The Court in *Dykes* also discussed the role of OPD. Typically, OPD satisfies an indigent defendant's right to counsel. *Id.* at 646. However, prior to the enactment of the Public Defender Act, Md. Code (2001, 2018 Repl. Vol.), Criminal Procedure Article §§ 16-101–403, courts were responsible for appointing counsel for indigent defendants. *Dykes*, 444 Md. at 650; *Baldwin v. State*, 51 Md. App. 538, 549 (1982). *Dykes* explained that the “Public Defender Act does not preclude a trial court from independently appointing counsel for an indigent defendant when the OPD is unable or unwilling to provide representation.” *Dykes*, 444 Md. at 650. Further, “even in the absence of a conflict or a declination by the OPD, a trial court has inherent authority to appoint counsel.” *Id.* (citing *In re Elrich S.*, 416 Md 15, 37–40 (2010)).

Step 1: The Defendant Explains the Reason for Requesting Discharge

The trial court does not need to conduct a “full-scale inquiry” into the defendant's reasoning for the discharge request. *Brown*, 342 Md. at 431. The court, however, retains

the responsibility to ensure that the defendant has explained their reason for requesting the discharge and is further required to consider the given reason before issuing a decision. *Id.* In *State v. Hardy*, the Supreme Court determined that because the defendant offered his reasonings for requesting a discharge on his own accord, there was no reversible error on the basis that the court did not deliberately question him regarding the request. 415 Md. 612, 630 (2010). The defendant in *Hardy* was provided the opportunity to explain his request, thereby complying with Rule 4-215(e) even though the court did not elicit the explanation. *Id.*

It is clear that the trial court complied with the first step of Rule 4-215(e). Despite some back and forth at the outset regarding whether Ogueri was actually requesting a discharge of defense counsel and thus whether an inquiry was necessary under the Rule, once the discharge request was apparent, Ogueri was able to explain the reasons for his dissatisfaction with his counsel. Ogueri offered two reasons for wanting to discharge counsel without any prompting from the court: lack of contact from defense counsel and being creeped out by counsel. In his words:

DEFENDANT OGUERI: He didn't call me. He didn't check on me. He didn't write me, nothing.

* * *

DEFENDANT OGUERI: . . . I will say is this guy right here has not given me my motion or discovery. He has not called me to discuss my case like most lawyers will and that worries me. I'm going into a trial with somebody that hasn't done anything or making me some offers. I'm not comfortable with this guy. . . .

* * *

DEFENDANT OGUERI: But at least if this guy right here just gives me the creeps, that's all.

* * *

DEFENDANT OGUERI: . . . [H]e has not written me, not even a letter. I asked him, why didn't you come see me? It was COVID. Okay, what about the face call? What about the phone time? . . . He could have -- he never done none of that. Not a letter, not a phone call. . . .

The court later explicitly asked Ogueri his reasons for wanting to discharge defense counsel, and Ogueri echoed the sentiments he had previously voiced:

THE COURT: . . . Now tell me why you want to fire the Office of the Public Defender.

DEFENDANT OGUERI: Because this guy has not done what any representative should have done, like talk to me about any offer that's been made. Or write me and discuss my case and let me know what the pros and cons in this case would be and give me a chance to just telling him my side of what actually happened. He doesn't know my side of the story of what happened.

THE COURT: Okay.

DEFENDANT OGUERI: He just, you know, all he got is just the paper of the charges that was given to him and with a case as serious as this one, I feel that at least I would have gotten a phone call, at least a letter from him or something and none of this was done and that's why I feel that I don't think he's going to be an effective lawyer on my behalf. So, I'm just, I guess I'm going to just take a chance to get through today and then appeal it. I'd rather do that then have this guy (unintelligible).

The record clearly shows that Ogueri was given the opportunity to explain his reasons for the request to discharge counsel, so Rule 4-215(e)'s first requirement was met.

Step 2: The Court Determines Whether the Reason Is Meritorious

As explained in *Dykes*, once the defendant has offered their explanation for requesting discharge of counsel, the court then decides whether the defendant's reasons are meritorious, which is equated with "good cause" shown. *Dykes*, 444 Md. at 652. The

meritoriousness determination is left to the court’s discretion but “must be measured against an objective standard.” *Brown*, 342 Md. at 413 n.3 (citing *United States v. Allen*, 789 F.2d 90, 93 (1st Cir. 1986)). The reviewing court will only reverse if the trial court’s decision on meritoriousness is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *State v. Taylor*, 431 Md. 615, 630 (2013) (quoting *King v. State*, 407 Md. 682, 697 (2009)).

Reasons for requesting discharge are situational, so there is no clear line for what reasons are meritorious and thus justify a discharge of counsel and which reasons are not. This Court explained in *Argabright v. State* that Rule 4-215 is premised on the right to effective assistance of counsel and that most requests to discharge counsel are motivated by a defendant’s belief that they are not receiving effective assistance. 75 Md. App. 442, 459–60 (1988). When ineffective assistance of counsel is found to be the true root of a defendant’s request to discharge counsel, courts have found the request to be meritorious. *See Weathers v. State*, 231 Md. App. 112, 139–40 (2016) (Graeff, J., concurring) (complete breakdown of communication or irreconcilable conflict would constitute meritorious reason for discharge); *Moore v. State*, 331 Md. 179, 186–87 (1993) (defendant’s inability to pay private counsel and denial of assistance from OPD is facially meritorious reason to proceed without counsel); *Dykes*, 444 Md. at 663 (defendant’s “palpable and obvious distrust” of OPD was meritorious reason to discharge OPD).

Conversely, when the court determines that the defendant’s discharge request is an attempt to delay trial or originated from minor disagreements between the defendant and

counsel, there is no meritorious reason for discharge. *See Fowlkes v. State*, 311 Md. 586, 607 (1988) (defendant’s discharge request was unmeritorious because trial court found it was primarily motivated by desire for delay); *Grandison v. State*, 341 Md. 175, 202 (1995) (counsel’s refusal to put on defendant’s requested defense was not meritorious reason for discharge); *Cousins v. State*, 231 Md. App. 417, 439–41 (2017) (failure to introduce certain evidence and grievance case against counsel not meritorious because defendant contributed to breakdown of communication and because grievance case was dismissed as groundless).

The right to effective assistance of counsel has a caveat for indigent defendants: the right is to “effective legal representation . . . not a right to representation by any particular attorney.” *Fowlkes*, 311 Md. at 605; *see also State v. Campbell*, 385 Md. 616, 627–28 (2005) (“[T]he defendant must be afforded an opportunity to explain the reasons for the request [to discharge counsel] and only may substitute counsel if good cause is shown, although the defendant is not entitled to substitute a specific appointed attorney if represented by the Office of the Public Defender.”). The Supreme Court, however, has held that if the trial court finds a meritorious reason for the defendant to discharge their counsel, appointed or otherwise, “the situation reverts . . . to that of a freshly arraigned, unrepresented defendant.” *Dykes*, 444 Md. at 653. If the defendant is indigent, the court may, if necessary, give the defendant opportunity to retain new appointed counsel. *Id.* In *Dykes*, the Court held that, having found a meritorious reason for discharge and heard Dykes’s insistence that he wanted an attorney, “the [trial] court should have referred Mr. Dykes to the OPD explicitly for the assignment of a new assistant public defender or panel

attorney or, if it believed that to be fruitless, acted on its own authority to offer to appoint counsel for him under its inherent authority.” *Id.* at 669 (footnote omitted).

Rule 4-215 does not require an explicit finding of whether the defendant’s reasons for discharge are meritorious. *See Webb v. State*, 144 Md. App. 729, 747 (2002) (“The court, after listening to [defendant’s explanation for appearing without counsel], implicitly found the reason was non-meritorious.”). However, the record must still “be sufficient to reflect that the court actually considered th[e] reasons” the defendant gives for wanting to discharge counsel. *Pinkney*, 427 Md. at 93 (quoting *Moore*, 331 Md. at 186) (alteration in original). Further, the “trial judge must give much more than a cursory consideration of the defendant’s explanation.” *Johnson v. State*, 355 Md. 420, 446 (1999).

Here, the trial court heard Ogueri’s reasons for wanting to discharge defense counsel and decided that those reasons were not meritorious. However, the record is not clear that the court sufficiently considered the reasons set forth by Ogueri. The court stated the following in response to Ogueri’s explanation:

THE COURT: Okay. Well thanks for explaining that. The Court finds and believes that [Ogueri] would be better represented by [defense counsel] than by himself understanding that he would have to go to trial today. He would have to find a meritorious reason that it would be better. This defendant has asserted his right to counsel. He’s hired the Public Defender. He’s gotten [defense counsel] such as he is. He’s disappointed in the, in the representation.

So, the question before this Court is whether it would discharge [defense counsel] and send this defendant before a jury without counsel. And to weigh that . . . in relation to the fact that this defendant has asserted his right have a lawyer, which patriots have fought and died for, and he wanted a lawyer. He got the Public Defender and he’s disappointed in the interaction from [defense counsel] and then he’s scared.

The Court does not find that is a meritorious reason to have him proceed without a lawyer today having not made this motion previously. . . .

The court’s misstep was that it misstated or merged standards required under the Rule. The record indicates that the court considered whether Ogueri would be better off representing himself; however, this is not the inquiry required under Rule 4-215(e). Although the court used the word “meritorious” in its determination to reject Ogueri’s reasons, the court then confused the standard that is applied under Rule 4-215(e). As Ogueri highlights, the court said there was no “meritorious reason to have him *proceed without a lawyer today*” (emphasis added), rather than no meritorious reason to *discharge counsel*. The inquiry for proceeding without counsel is a willing and voluntary standard under 4-215(b), rather than based upon meritoriousness of reasons under 4-215(e).

The court was required to demonstrate on the record that it actually considered whether the reasons given by Ogueri for wanting to discharge counsel were meritorious and that it did so with a more than cursory consideration. Instead, the court appeared to weigh Ogueri’s stated reasons against whether he should be allowed to proceed without counsel, which would be the outcome under Rule 4-215(e) if the reasons were unmeritorious, and concluded that Ogueri should not represent himself. This was not the consideration required under 4-215(e). The Supreme Court highlighted this distinction in *Dykes*: “Mr. Dykes made repeated, unequivocal statements . . . that he wanted an attorney Unfortunately, *the concepts of discharge and waiver were nevertheless treated as equivalent*” *Dykes*, 444 Md. at 668 (emphasis added).

“Because the Rule requires strict compliance, a judge must *first* determine whether there is any merit to the defendant’s *request for discharge*.” *State v. Weddington*, 457 Md. 589, 606 (2018) (emphasis added); *see also State v. Westray*, 444 Md. 672, 675 (2015) (“This determination—whether there is ‘good cause’ for discharge of counsel—is an indispensable part of subsection (e) [of Rule 4-215] . . .”). Here, the court’s initial focus was whether Ogueri should proceed without counsel, not whether his stated reasons were meritorious. The court’s first exchange with Ogueri also reflects this confusion of the issues:

THE COURT: I’m not going to ask him. He’s got to tell me. Do you want to fire the Public Defender’s Office?

DEFENDANT OGUERI: Him [defense counsel], yes.

THE COURT: But not the Office of the Public Defender?

DEFENDANT OGUERI: No.

THE COURT: Okay, then we’re done.

Throughout the exchanges between the court, defense counsel, and Ogueri, the court viewed Ogueri’s requests for a new Public Defender through the wrong lens by focusing on whether Ogueri wanted *any* assistance of counsel, not the reasons given for his discontent with his specific counsel. Although *Fowlkes* narrows the right to counsel for indigent defendants to “effective legal representation . . . not . . . to representation by any particular attorney,” 311 Md. at 605, if Ogueri expressed a meritorious reason for wanting to discharge his assigned Public Defender, *Fowlkes*’s limitation would have been of little consequence under *Dykes*. As a result, the court did not strictly comply with Rule 4-215(e).

Part of the court’s misstep appears to have stemmed from the belief that allowing Ogueri to discharge his current Public Defender would necessarily leave him unrepresented. The court plainly understood that Ogueri wanted an attorney but not the one appointed to him by OPD:

THE COURT: And I, you know, I think that that’s . . . what I ascertained, and he doesn’t, you know, you don’t want to waive your right to a lawyer, right? You want a lawyer, right. That’s what he said. So, he wants a lawyer and we’re not discharging you and he can’t afford one. So, there we are. . . . I agree with you that he . . . has a constitutional right to represent himself. But that’s not what he’s expressed. He’s expressed that he wants the Public Defender, and he doesn’t want you. Not an option I have. If you want to get him a different Public Defender . . . the Court would be very open to that, but I don’t think that’s how this works. Okay?

The court recognized that it had no control over OPD’s appointment but seemed to not consider that if the court had fully considered Ogueri’s reasons for wanting to discharge counsel and determined that those reasons were meritorious, then the court would have the authority to appoint Ogueri a new attorney if OPD declined to represent him. *See Dykes*, 444 Md. at 669. By jumping to the conclusion that allowing a discharge of counsel would require Ogueri to proceed without counsel, the court conflated the considerations required for *waiver* of counsel and those required for *discharge* of counsel. This does not meet the requirement of strict compliance with Rule 4-215. As such, the record is not clear that the court thoroughly considered whether Ogueri’s reasons for wanting to discharge counsel were meritorious, which constitutes reversible error.⁴

⁴ Because there is an error in Step 2 of the Rule 4-215(e) procedure, we do not reach Step 3, which is whether the court proceeded correctly based upon its meritoriousness determination.

CONCLUSION

We conclude that the circuit court did not comply with the requirements of Rule 4-215. For this reason, we remand the case for further proceedings consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR WASHINGTON COUNTY
REVERSED AND REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY APPELLEE.**