Circuit Court for Frederick County
Case Nos.: C-10-CR-21-000212 & C-10-CR-21-000213

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

Nos. 1153 & 1206

September Term, 2022

DWIGHT DOUGLAS LARCOMB

v.

STATE OF MARYLAND

Leahy,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 6, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

**This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

At the end of his second trial in the Circuit Court for Frederick County, a jury convicted Dwight Douglas Larcomb, appellant, of stalking, intimidating or corrupting a witness, and 18 counts of violating a protective order. Larcomb represented himself at both trials because he had previously discharged his assistant public defender and the Office of the Public Defender ("OPD") and waived his right to counsel.[1] Now on appeal, Larcomb contends that the circuit court erred in not *sua sponte* offering to exercise its inherent authority to appoint him substitute counsel. We disagree and shall affirm.

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee a criminal defendant's right to counsel. *See Gideon v. Wainwright*, 372 U.S. 335, 342–43 (1963); *Walker v. State*, 391 Md. 233, 245 (2006). They also guarantee defendants the right to reject that assistance and represent themselves. *Dykes v. State*, 444 Md. 642, 650 (2015). When defendants, who are already represented by counsel, seek to discharge counsel and represent themselves Maryland Rule 4-215(e) governs.

Subsection (e) is broken down into three steps:

1. The defendant explains the reason(s) for discharging counsel.
2. The court determines whether the reason(s) are meritorious.
3. The court advises the defendant and takes other action.

Id. at 652. If the court finds a meritorious reason for discharge at step two, "the situation reverts—insofar as concerns the right to counsel—to that of a freshly arraigned,

[1] The circuit court held a single discharge hearing for both cases.

unrepresented defendant." *Id.* at 653. The court must "grant the request [for discharge] and, if necessary, give the defendant an opportunity to retain new counsel." *Williams v. State*, 321 Md. 266, 273 (1990). For an indigent defendant, "this means an opportunity for new appointed counsel." *Dykes*, 444 Md. at 653. The court then refers the defendant to OPD "explicitly for the assignment of a new assistant public defender or panel attorney[.]" *Id.* at 669. If, however, the court believes that to be futile, it may act "on its own authority to offer to appoint counsel for [the defendant] under its inherent authority." *Id.*

Importantly, discharge of counsel for a meritorious reason does not automatically constitute waiver of the right to counsel. *Id.* at 654. That said, the court is not required to appoint counsel if the defendant affirmatively waives counsel and the court finds, after the appropriate inquiry under Rule 4-215, that the defendant does so knowingly and voluntarily. *Id.* at 669.

These principles were first announced in *Dykes v. State*, and Larcomb argues the circuit court here ran afoul of them. We are not persuaded. In *Dykes*, the circuit court's error was treating the defendant's meritorious discharge of his assistant public defender and OPD as equivalent to waiving his right to counsel. *Id.* at 668. The court there also appeared unaware that it had inherent power to appoint the indigent defendant substitute counsel. *Id.* Thus, the indigent defendant's "repeated, unequivocal statements . . . that he wanted an attorney . . . both in writing and in person[,]" were improperly ignored. *Id.* Importantly, the defendant's requests for counsel continued *after* he had discharged his assistant public defender. *Id.*

Here, in contrast, Larcomb's requests for a new attorney came while he was still represented by OPD and well before the discharge hearing. By the time of the hearing, however, Larcomb insisted that he could to a "better job" than his assistant public defender and made repeated, unequivocal requests to represent himself. Further distinguishing this case from *Dykes* is the fact that after granting Larcomb's discharge request, the court conducted a thorough, on-the-record examination to ensure he was knowingly and voluntarily waiving his right to counsel.[2] Now, Larcomb argues that the circuit court was required to offer, *sua sponte*, to exercise its inherent power to appoint him new counsel. But neither *Dykes* nor Rule 4-215 impose this requirement. Consequently, the circuit court did not err in accepting Larcomb's waiver.

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[2] Although the circuit court did not "determine and announce" its finding that Larcomb's waiver was knowing and voluntary as ordinarily required by Rule 4-215(b), it nevertheless conducted the litany under subsections (a)(1) through (a)(4). The Supreme Court of Maryland has not yet resolved whether the "determine and announce" requirement always applies when a court is carrying out the dictates of Rule 4-215(e), *see State v. Westray*, 444 Md. 672, 686 (2015), but Larcomb does not challenge this omission. We therefore need not address it here. *See Abbott v. State*, 190 Md. App. 595, 631 n.14 (2010).