

Circuit Court for Baltimore City  
Case No. 122019022

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1309

September Term, 2023

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REGINALD GARDNER

v.

STATE OF MARYLAND

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Berger,  
Shaw,  
Harrell, Glenn T., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: July 5, 2024

\*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a jury trial, at which he represented himself, Reginald Gardner, appellant, was convicted of attempted armed robbery; conspiracy to commit armed robbery; first-degree assault; use of a firearm in the commission of a crime of violence; possession of a firearm after having been convicted of a disqualifying crime; and wearing, carrying, or transporting a handgun. Appellant raises three issues on appeal: (1) whether the court violated Maryland Rule 4-215 when it permitted him to discharge his appointed counsel prior to trial; (2) whether the court erred in admitting photographs that were not disclosed to the defense as required by Maryland Rule 4-263; and (3) whether the court plainly erred in allowing the State to make an improper argument during its rebuttal closing argument. The State concedes that the court did not fully comply with Maryland Rule 4-215 and, therefore, that reversal is required. For the reasons that follow, we shall reverse the judgments of the circuit court.

Maryland Rule 4-215(e) outlines the procedures a court must follow when a defendant desires to discharge his counsel to proceed *pro se* or to substitute counsel. Specifically, the Rule provides:

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).

Maryland Rule 4-215(a), which is embodied in Rule 4-215(e), “implements the constitutional mandates for waiver of counsel, detailing a specific procedure that must be followed by the trial court in order for there to be a knowing and intelligent waiver.” *Richardson v. State*, 381 Md. 348, 367 (2004) (quotation marks and citations omitted). Under that Rule, before the defendant can discharge counsel, the court must ensure that the defendant has received a copy of the charging document; inform the defendant of his right to counsel and the importance of counsel; and advise the defendant of the nature of the charges and the allowable penalties. Md. Rule 4-215(a)(1)-(3).

Our Supreme Court has stated that “the Maryland Rules are precise rubrics” and that “the mandates of Rule 4-215 require strict compliance.” *Pinkney v. State*, 427 Md. 77, 87 (2012). “Thus, a trial court’s departure from the requirements of Rule 4-215 constitutes reversible error.” *Id.* at 88. We review a trial court’s interpretation and implementation of Rule 4-215 *de novo*. *Id.*

Here, the court permitted appellant to discharge his counsel on the morning of trial. In doing so, the court attempted to advise appellant of the nature of the charges against him and the possible penalties for each offense. But in advising appellant regarding the charge of conspiracy to commit armed robbery, the court informed appellant that, if convicted, he could be sentenced to “essentially anything that is not cruel and unusual.” This advisement was incorrect, however, as Section 1-202 of the Criminal Law Article provides that the

possible punishment for conspiracy “may not exceed the maximum punishment for the crime the person conspired to commit.” And the maximum possible punishment for armed robbery is 20 years’ imprisonment. Crim. Law Art. § 3-403(b). Moreover, the record does not indicate that appellant was otherwise correctly advised regarding the allowable penalties for that offense at a different point in the proceedings.

To be sure, it is unclear how appellant’s decision to waive counsel would have been affected by the court’s erroneous advice that the penalty he faced was greater than what it actually was. Nevertheless, the Maryland Supreme Court has consistently held that a harmless error analysis is not applicable to violations of Maryland Rule 4-215(a)(3). *See State v. Camper*, 415 Md. 44, 58 (2010) (“refus[ing] to depart from the rule . . . that a Rule 4-215(a)(3) violation is not subject to harmless error analysis”); *Broadwater v. State*, 401 Md. 175, 182 (2007) (holding that “the requirements of Maryland Rule 4-215 are mandatory and must be complied with, irrespective of . . . the lack of an affirmative showing of prejudice to the accused” (internal quotation marks and citation omitted)). Because compliance with Rule 4-215 is mandatory, appellant’s convictions must therefore be reversed.<sup>1</sup>

**JUDGMENTS OF THE CIRCUIT COURT  
FOR BALTIMORE CITY REVERSED.  
COSTS TO BE PAID BY MAYOR AND  
CITY COUNCIL OF BALTIMORE.**

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<sup>1</sup> Because we hold that the court failed to comply with Maryland Rule 4-215(a)(3), we do not address appellant’s remaining claims because our reversal of his convictions renders these issues moot.