

Circuit Court for Wicomico County
Case No. C-22-CR-22-000382

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1391

September Term, 2023

ERIC DARNELL THOMAS, SR.

v.

STATE OF MARYLAND

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 9, 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 bench trial in the Circuit Court for Wicomico County, at which he represented himself, Eric Darnell Thomas, Sr., appellant, was convicted of possession with intent to distribute buprenorphine; possession of cocaine; possession of buprenorphine; possession of oxycodone; and possession of ammunition by a prohibited person.¹ The court imposed a sentence of 40 years' imprisonment for possession of buprenorphine with intent to distribute, and concurrent one-year sentences for possession of cocaine, possession of oxycodone, and unlawful possession of ammunition. Appellant raises three issues on appeal: (1) whether the court violated Maryland Rule 4-215 when it permitted him to discharge counsel; (2) whether the court imposed an illegal sentence when it sentenced him to 40 years' imprisonment for possession with intent to distribute buprenorphine; and (3) whether the court abused its discretion when it refused to order the disclosure of the confidential informant's information. The State concedes that the court did not fully comply with Rule 4-215 and, therefore, reversal is required. It also agrees that appellant's sentence for possession with intent to possess buprenorphine is illegal. For the reasons that follow, we shall reverse the judgments of the circuit court.

Appellant was allowed to discharge his appointed counsel prior to trial, and he ultimately represented himself at a suppression hearing several weeks later. Thereafter, appellant obtained private counsel. However, the court allowed him to discharge that attorney on the day of trial. Appellant now asserts that the trial court failed to comply with

¹ He was acquitted of possession with intent to distribute cocaine and three counts of keeping and maintaining a common nuisance for the distribution, storage, or concealment of a controlled substance.

Rule 4-215(e) when it permitted him to discharge his counsel on both occasions. Specifically, he alleges that when he discharged his appointed counsel, the court failed to accurately inform him of the possible penalties he faced; failed to conduct an adequate waiver inquiry; and failed to announce on the record that his waiver was knowing and voluntary. He further claims that when he discharged his retained counsel, the court failed to ask why he wanted to discharge counsel and again failed to accurately inform him of the possible penalties he faced. The State concedes that the court erred on both occasions by failing to accurately inform appellant of the possible penalties he faced for each offense. We need not address every contention raised by appellant because we agree that, at a minimum, the court erred in failing to properly advise appellant regarding the allowable penalties for each offense set forth in the indictment before allowing him to discharge his retained counsel on the morning of trial.

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 referenced 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). The last requirement “includes notice of subsequent offender penalties.” *Knox v. State*, 404 Md. 76, 88 (2008).

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, appellant was charged with, and went to trial on, nine counts. But the court did not accurately advise appellant regarding the possible penalties he faced on counts 2-4 prior to allowing him to discharge his retained counsel.² We explain. Appellant was

² The fact that appellant was ultimately acquitted of counts 2 and 4 does not affect our analysis as the Supreme Court of Maryland has held that incorrect advisements with respect to acquitted charges still require reversal. *Brye v. State*, 410 Md. 623, 643 (2009).

charged in counts 2-4 with keeping a common nuisance with cocaine, possession with intent to distribute buprenorphine, and keeping a common nuisance with buprenorphine. With respect to count 2, the court advised appellant that the offense carried a maximum possible penalty of 20 years of incarceration and/or a \$15,000 fine. However, Section 5-608(a) of the Criminal Law Article provides for enhanced penalties for subsequent offenders who violate “§§ 5-602 through 5-606 of this subtitle with respect to a Schedule I or Schedule II narcotic drug[.]” Appellant was charged in count 2 with maintaining a common nuisance for the distribution, storage, or concealment of a controlled substance, a violation of CL § 5-605(a)(2), which involved cocaine, a Schedule II narcotic drug. Moreover, appellant was a fourth time offender and the State had filed a notice of intent to seek subsequent offender penalties. Consequently, appellant in fact faced a maximum penalty of 40 years’ incarceration and a \$25,000 fine for that offense. *See* Crim. Law Art. § 5-608(d).

On the other hand, with respect to counts 3 and 4, the court advised him that those offenses carried a maximum possible penalty of 40 years of incarceration and/or a \$25,000 fine. However, unlike cocaine, buprenorphine is classified as a Schedule III drug. *See* Crim. Law Art. § 5-404; 21 C.F.R. § 1308.13(e)(2)(i). Therefore, appellant was not subject to enhanced penalties as a subsequent offender for those offenses. Instead, his sentence was governed by Section 5-607 of the Criminal Law Article, which provides for a

maximum possible sentence of 5 years’ imprisonment or a fine not exceeding \$15,000 or both.³

In sum, the court did not accurately advise appellant of the possible penalties for each charged offense before allowing him to discharge his retained counsel on the morning of trial. And the record does not indicate that appellant was otherwise correctly advised regarding the allowable penalties for those offenses at any other point in the proceedings, including when he discharged his appointed counsel prior to the suppression hearing. Because compliance with Rule 4-215 is mandatory, appellant’s convictions must therefore be reversed.⁴

**JUDGMENTS OF THE CIRCUIT COURT
FOR WICOMICO COUNTY REVERSED.
COSTS TO BE PAID BY WICOMICO
COUNTY.**

³ For the same reason, we hold that appellant’s sentence of 40 years’ imprisonment for possession with intent to distribute buprenorphine was illegal. In the event that appellant is again convicted of that offense, the maximum penalty he could receive would be 5 years’ imprisonment, a fine not exceeding \$15,000, or both.

⁴ We do not address appellant’s claim that the court abused its discretion in declining to compel the identification of the confidential informant information because our reversal of his convictions renders these issues moot.