Circuit Court for Somerset County
Case No. C-19-CR-18-000033

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1856

September Term, 2022

BRADFORD TILGHMAN

v.

STATE OF MARYLAND

Wells, C.J.,
Tang,
Ausby, Kendra Y.,
(Specially Assigned),

JJ.

Opinion by Wells, C.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 Maryland Rule 1-104(a)(2)(B).

In 2018, a jury empaneled in the Circuit Court for Somerset County convicted appellant Bradford Tilghman of second-degree assault, reckless endangerment, two counts of fourth degree burglary, carrying a dangerous weapon with intent to injure, and malicious destruction of property under $1,000. The court sentenced him to an aggregate thirteen-year term of incarceration and imposed a $2,500 fine. After a hearing on Tilghman's 2022 request for post-conviction relief, the court granted Tilghman the right to file a belated appeal so that he could raise the following two issues, which we have rephrased:

1. Did the circuit court properly advise Tilghman of all of the charges and the applicable maximum penalties under Rule 4-215?

2. Did the circuit court properly follow the procedure outlined in Rule 4-215 in determining that Tilghman's proffered reason for wanting to discharge counsel was not meritorious?

We conclude the circuit court complied with both requirements of the Rule and affirm.

FACTUAL BACKGROUND

Because of the nature of this appeal, we need not discuss the facts underlying Tilghman's convictions. Instead, we focus on the events that occurred at the motions hearing of July 16, 2018, because they form the backdrop to both claims of error.

At that time, Tilghman was represented by Anders Randrup, III, Esquire.[1] The purpose of the hearing was to allow Tilghman to explain to the court why he wanted to fire his attorney. Tilghman explained that he was angry with Randrup for two main reasons.

[1] Randrup was assigned this case at the Office of Public Defender's (OPD) request after Tilghman filed a federal lawsuit against the assigned Public Defender, (and against whom Tilghman also filed a grievance), the assigned prosecutor, and the local police department.

First, Randrup had in his possession three police body worn camera videos that, according to Tilghman, "contradict everything the State's [had]," but Randrup had not shown him the videos. *Second*, according to Tilghman, Randrup filed a motion to suppress but had not shared the substance of the motion with him.

At the court's request, Randrup summarized his experience handling cases in a variety of practice areas, including criminal law. He stated he had represented clients in Maryland's trial and both appellate courts. He recounted his successes as defense counsel in approximately sixty jury trials, as well as his success in the appellate courts. The motions judge agreed with Randrup's self-assessment of his professional ability, calling him "a very competent attorney."

Randrup then explained that after he entered his appearance on Tilghman's behalf in this case, he visited him at the local detention center and gave him copies of the indictment, the police report, and Tilghman's rap sheet. Randrup also said he told Tilghman that he had with him the three videos from the arresting officers' body worn cameras, but Tilghman refused to watch them and went back to his cell. Also, Randrup recounted that he visited Tilghman at the detention center five days later and gave him additional discovery items, including a motion for the State to produce grand jury testimony, the State's response to that motion, the court's denial of the same, as well as other defense discovery requests. Randrup had with him a trial notebook comprised of over 200 pages. With the trial three weeks away, on August 8, 2018, Randrup told the court that he would be ready to represent Tilghman before a jury.

Tilghman, however, told the court that "everything that [Randrup] said he was going to do, he didn't do." "I haven't seen the tapes, the motion that he filed . . . I haven't seen it. Several motions." "He hasn't been to see me, he hasn't contacted my witnesses." "I don't have a clue what's going on . . . ." "I wrote him a letter[;] I haven't got no response from the letter I wrote him." During these comments, Randrup handed Tilghman a "half-sized" version of the omnibus motion to suppress that he said he filed. The court asked the courtroom clerk to make a full-sized copy for Tilghman.

Afterward, the court said to Tilghman: "He [Randrup] is an experienced attorney. Do you not want him to represent you?" Tilghman continued to complain that he hadn't received the motion to suppress before the hearing. The court asked again: "Do you want to discharge him or not?" Tilghman responded: "I don't know yet because I don't know what he's done[;] I'm just finding out now what's going on, Your Honor."

The court then took a recess to allow Tilghman to privately view the three police body worn camera videos with Randrup. After the court reconvened, Randrup told the court that Tilghman reviewed one video but refused to look at the other two. Apparently, at some point during the break, the two got into a discussion about whether the Clerk of the Court had the authority to sign an arrest warrant. Tilghman did not like what he deemed Randrup's "evasive" answer, namely, that it was an issue they should discuss later. From there, Tilghman told the court that he wanted to discharge Randrup. "He's got to go."

After Tilghman announced he wanted to discharge Randrup as his attorney, the court said the following:

> THE COURT: All right. Now, here's what I'm going to read to you[,] and this is from Rule 4-215, Maryland Rules.
>
> 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[.] I've done that.
>
> 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 actions necessary, and advise the Defendant 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 through 4 of this rule, if the docket or file does not reflect prior compliance.

(Paragraph breaks introduced). The court then said:

> Now, I have listened very carefully to what you have indicated to the Court, Mr. Tilghman. I've seen the file in preparation that Mr. Randrup has in the courtroom, I'm familiar with Mr. Randrup's level of representation, and I'm giving you the opportunity today to get the motions that you wanted, to look at the videos. **So the Court finds no meritorious reason for the discharge of counsel.**

(Emphasis added). Next, the court advised Tilghman as follows:

> THE COURT: Now, I need to tell you this before we go any further. Since there's been a grievance and a lawsuit filed against Mr. McFadden, who is the primary Public Defender in this county, and actually one of the -- one of the better lawyers on the Eastern Shore -- in Maryland as I'm concerned. Mr. Randrup was appointed by the -- or designated, paneled out as the attorney representing you. And it has been my experience, not absolute, that **if you discharge a Public Defender or someone who is paneled by the Public Defender, it is very, very unlikely that the Public**

> **Defender will provide additional counsel for you; do you understand that?**
>
> THE DEFENDANT: **I understand, Your Honor**.

(Emphasis added).

After a discussion with Tilghman about the charges he was facing and the maximum penalties, which we will discuss later, the court reminded him of the trial date, an upcoming motions date, and ensured he had a copy of the indictment. Finally, the court emphasized the importance of having counsel by the trial date.

> THE COURT: And 4-215(a)(2) says inform the Defendant of right to counsel and importance of the assistance of counsel. I've told you that if you represent yourself and I've done a little research, I know because you've represented yourself on a couple of other cases, but you understand --
>
> THE DEFENDANT: Your Honor, I don't want to represent myself, I really don't, it is not in my best interest.
>
> THE COURT: Well, listen to me, listen to me. You understand it's important to have an attorney?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Because if you represent -- if you end up representing yourself, you'll be held to the same standards as an attorney would be held to, the same rules of practice and procedure; do you understand all of that?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: All right. Do you know what the charges are and what the maximum penalty are; is that right? Okay. **Now, what are you going to do about an attorney?**
>
> THE DEFENDANT: Your Honor, **I'm going to have to try it – I'm going to have to try it again. Your Honor, there's no way in this world that my attorney is representing me,** I ask him a question and he's going to just completely ignore me. . . .

> **THE COURT**: **Well, I've already found that there's no meritorious reason for discharge. Nonetheless, if you want him off the case, then I will allow you to discharge him.**
>
> **THE DEFENDANT: Yes, sir, Your Honor.**
>
> THE COURT: All right. Mr. Randrup, your appearance is stricken, you are discharged.

(Emphasis added).

I. THE COURT PROPERLY COMPLIED WITH RULE 4-215(e), DISCHARGE OF COUNSEL FOR NO MERITORIOUS REASON

The 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.

The rubric required by Rule 4-215 can be broken down into three steps. *State v. Westray*, 444 Md. 672, 674-75 (2015). First, the court must give a defendant who requests permission to discharge counsel the opportunity to explain the reasons for wanting to do so. *Id.* Next, court must determine whether the defendant's reasons are meritorious. *Id.* Finally, based on this determination, the court must then advise the defendant on what actions need to be taken. *Id.* If the court has found that the defendant has meritorious reasons, the court shall permit the defendant to discharge counsel and "give the defendant an opportunity to retain new counsel. In the case of an indigent defendant, this means an opportunity for new appointed counsel." *Dykes v. State*, 444 Md. 642, 653 (2015) (internal

citation omitted) (quoting *Williams v. State*, 321 Md. 266, 273 (1990)). If the court has found that there is no meritorious reason to discharge counsel, the court shall advise the defendant that the trial will proceed as scheduled and that he will be unrepresented if he does not obtain new counsel. *Id.* at 653. Under either circumstance, the court must also conduct proceedings outlined in Rule 4-215(a) governing a defendant's first appearance in court without counsel.[2]

We review the circuit court's interpretation and implementation of Rule 4-215 without deference. *Pinkney*, 427 Md. at 88, The court's conclusions are, however, discretionary, and we review the trial court's evaluation of whether the reasons for discharging counsel are meritorious with great deference, subject only to abuse of discretion. *State v. Taylor*, 431 Md. 615, 630 (2013). An "abuse of discretion" occurs "where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Nash v. State*, 439 Md. 53, 67 (2014) (cleaned up).

[2] Maryland Rule 4-215(a) provides that the court shall:
(1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.
(2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.
(3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.
(4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.

In this case, the court convened a hearing specifically to determine whether Tilghman wanted to discharge his attorney. From the transcript of the hearing, we conclude that the court understood the steps it needed to take to ensure proper compliance with Rule 4-215 to permit the discharge of counsel. *First*, the court heard Tilghman explain why he wanted to discharge Randrup. Tilghman's reason was because, essentially, Randrup "hadn't done anything" for him.

Second, the court did not find Tilghman's reason for discharge to be meritorious. In determining whether the reasons proffered are meritorious, circuit courts are encouraged to consider six factors:

> (1) the merit of the reason for the discharge; (2) the quality of counsel's representation prior to the request; (3) the disruptive effect, if any, that discharge would have on the proceedings; (4) the timing of the request; (5) the complexity and stage of the proceedings; and (6) any prior requests by the defendant to discharge counsel.

Hargett, 248 Md. App. at 509-10 (quoting *State v. Brown*, 342 Md. 404, 428 (1996)). Rule 4-215(e) does not, however, require the court to state on the record whether it deems those reasons meritorious or not. An implicit determination is sufficient. Indeed, Rule 4-215(e) contains no such language requiring a court to expressly find on the record that a defendant's reasons for discharge are meritorious when the record establishes that the circuit court considered the reasons proffered and implicitly found the reasons offered lack merit. *Cf. Broadwater v. State*, 171 Md. App. 297, 327 (2006) (holding that the circuit court did not err by making an implicit finding that there was no meritorious reason for the defendant's appearance without counsel); *Webb v. State*, 144 Md. App. 729, 747

(2002) (finding no error where "[t]he court, after listening to the explanation" for discharging counsel under Rule 4-215(d), "implicitly found the reason was non-meritorious").

Here, the court questioned Tilghman repeatedly about his reasons for wanting to discharge his attorney, Randrup. Further, the court listened to Randrup explain what he had done to represent Tilghman. In concluding that Tilghman's reasons for wanting to discharge Randrup lacked merit, the court credited Randrup's recitation of what he'd done over Tilghman's perception that Randrup had done "nothing." In crediting Randrup's explanation, the court found that far from being ineffective and ignoring Tilghman, Randrup visited him twice in the detention center, filed the appropriate pre-trial suppression and discovery motions, wanted to view the arresting officers' body worn camera videos with him, compiled a trial notebook, and was, by all indications, prepared to represent Tilghman at trial.

Third, in compliance with the Rule, the court twice told Tilghman that if he discharged Randrup, who was acting as an assigned Public Defender because of Tilghman's lawsuit against the OPD, it was unlikely that the OPD would assign him another Public Defender. Tilghman had to obtain counsel by the trial date, August 8, or be prepared to represent himself at trial. The court ensured that Tilghman had a copy of the indictment, and, as we shall discuss in the next section, ensured compliance with subsection (a) of Rule 4-215.

II. THE CIRCUIT COURT PROPERLY COMPLIED WITH RULE 4-215(a)

As previously stated, if the court finds there is no meritorious reason for a defendant's desire to discharge counsel under Rule 4-215(e), then the court must ensure that the defendant is aware of the trial date and that the defendant must obtain new counsel by the trial date or will have to represent himself or herself. Unless the docket reflects that it was done at a prior hearing, the court must also ensure compliance with subsection (a) of the Rule, in that the defendant must have a copy of the charging document, advise the defendant of the importance of obtaining counsel, advise the defendant of the charges and the penalties, and conduct a waiver hearing if the defendant elects to waive counsel.

Before this Court, Tilghman complains that on July 16, 2018, the court advised him of the charges and maximum penalties for only three of the charges[3] but neglected to inform him about the other six charges.[4] This claim of error is without merit. Rule 4-215(e) states that court must comply with Rule 4-215(a) if the docket does not reflect the court's compliance with this subsection on a previous occasion. That is the case here.

The docket entries for April 23, 2018, show that at Tilghman's first appearance before the circuit court, the presiding judge advised Tilghman, who was not represented by counsel at the time, of the charges and the maximum penalties. We will not reproduce the

[3] Assault in the first degree (Md. Code. Anno. Crim. Law ("CR") § 3-202), assault in the second degree (CR § 3-203), and home invasion (CR § 6-202(b)).

[4] Burglary in the third degree (CR § 6-204), burglary in the fourth degree (CR § 6-205), reckless endangerment (CR § 3-204(a)(1), possession of or carrying a dangerous weapon openly with intent to injure (CR § 4-101(c)(2), malicious destruction of property valued under $1,000 (CR § 6-301).

entire colloquy between the court and Tilghman in this regard because we are satisfied that the court complied with advising Tilghman of the charges and the maximum penalties as required by Rule 4-215(a) after our review of the transcript of those proceedings. Further, the "Initial Appearance Minutes" for April 23, 2018, signed by the presiding judge states:

> The above defendant [Bradford Tilghman] appeared before me today pursuant to Maryland Rule 4-215 because no appearance of counsel had been entered. I have ascertained that the defendant has received a copy of the charging document(s). Also, I advised the defendant:
>
> 1. Of the nature of the charges against him and any lessor-included offenses and the range of allowable penalties including mandatory and minimum penalties, if any[.]

Tilghman's signature follows, acknowledging receipt of the initial appearance sheet and that he "fully understood the advice of the judge."

At the July 16, 2018 hearing on the discharge counsel, the presiding judge at that hearing noted that Tilghman had already been advised of the right to counsel, given a copy of the indictment, and apprised of the charges and their maximum penalties, a fact that Tilghman did not deny:

> THE COURT: All right. I'm also looking at the docket entries. And it would appear that you were in front of Judge Oglesby and the case was called for initial appearance; is that correct, Mr. Tilghman? You were in front of Judge Oglesby.
>
> THE DEFENDANT: Yes, I think it was, yes.
>
> THE COURT: And he advised of your rights to counsel
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: -- he advised of your rights, maximum penalties, and that sort of thing.
>
> THE DEFENDANT: Yes, sir.

> THE COURT: You received a copy of the indictment, you have a copy of the charging document?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: You do?
>
> THE DEFENDANT: That's why I was arguing with my counsel a while ago, that's why I was discharging with him.
>
> THE COURT: You have copies of that though?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: And 4-215(a)(2) says inform the Defendant of right to counsel and importance of the assistance of counsel. . . .

Both of our appellate courts have consistently held that requirements of Rule 4-215(a) can be satisfied in a "piecemeal, cumulative" fashion by multiple courts over multiple hearings. *See Broadwater*, 401 Md. at 200. "If evidence objectively establishes that the defendant actually received a copy of the charging document," the Rule 4-215(a) requirement is satisfied. *Muhammad v. State*, 177 Md. App. 188, 250 (2007) (citing *Fowlkes v. State*, 311 Md. 586, 609 (1988)).

The docket entries and transcript of April 23, 2018 initial appearance hearing, show that the court advised Tilghman of each charge and the maximum allowable penalties, and he signed a form acknowledging the same. At the waiver of counsel hearing, the presiding judge noted that Tilghman was advised of the charges and maximum penalties at his initial appearance, and Tilghman agreed. We conclude the circuit court complied with Rule 4-215(a)'s requirement that Tilghman know of the charges and the maximum penalties he could face. The court explaining to Tilghman three of the nine charges and their maximum

penalties at the waiver of counsel hearing was not error, as the requirement of the Rule had already been satisfied.

THE JUDGMENT OF THE CIRCUIT COURT FOR SOMERSET COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.