

Circuit Court for Montgomery County
Case No. C-15-CR-22-000940

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1995

September Term, 2023

BEN TATU CHIRIKADZI

v.

STATE OF MARYLAND

Nazarian,
Reed,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 1, 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.

Convicted by a jury in the Circuit Court for Montgomery County of financial exploitation of a vulnerable adult and theft scheme, Ben Tatu Chirikadzi, appellant, presents for our review a single issue, which for clarity we rephrase: whether the court complied with Rule 4-215. For the reasons that follow, we shall affirm the judgments of the circuit court.

On September 7, 2022, Mr. Chirikadzi was charged by criminal information in the circuit court. On October 5, 2022, defense counsel entered his appearance. The court subsequently scheduled trial to commence on February 21, 2023. On February 2, 2023, Mr. Chirikadzi requested a postponement of trial. The court granted the request and rescheduled trial to commence on September 20, 2023.

On September 19, 2023, Mr. Chirikadzi and defense counsel appeared before the court, the Honorable Rachel McGuckian presiding. Defense counsel stated that the hearing was “intended to be a plea,” but he instead “ha[d] to make an open court motion to withdraw.” Defense counsel stated that Mr. Chirikadzi did not “want [defense counsel] to represent him,” and that attorney Terrence McGann “said [that] he will speak to the defendant if it gets postponed.” The prosecutor stated that due to a medical emergency, the victim would not be available for trial, and hence, the prosecutor “would . . . be asking for a continuance regardless.” The court ordered the parties to appear before the circuit court’s administrative judge, the Honorable James A. Bonifant. The court stated to Mr. Chirikadzi: “[Y]ou’re going to get a new date for your trial . . . that will not be moved, so I suggest that you have Mr. McGann ready to contact so that when Judge Bonifant proposes a new date for your trial, you can say to the [j]udge, I need a moment to check with my

new lawyer to see if he's available that day. . . . Because you're not going to get it moved again Do you understand?" Mr. Chirikadzi replied: "Definitely, Your Honor."

Later that day, the parties appeared before Judge Bonifant, who asked Mr. Chirikadzi for "the reason why [he] want[ed] a new attorney." Mr. Chirikadzi replied, in pertinent part:

- ". . . I reject the plea offer and because he's got some circumstances that is going to jeopardize my life."
- ". . . I rejected the plea deal. Offer pleaded \$10,000; I don't do that. So I been talking with another attorney, telling him again as[k] for postponement, you come to my office. This is a process."
- "I'm not pleased with his service, that's all."
- ". . . I'm not taking the plea deal. That's what he had offered."
- ". . . I talked to the attorney, and he said you take and get a postponement."
- "[I]t's my right to have a new attorney."

Noting that the "case ha[d] been in the court for a year," and Mr. Chirikadzi came "before the [c]ourt a day before the trial for the second time asking for a postponement," the court stated that it had not yet heard "a meritorious reason." The court asked defense counsel for "any meritorious reason why [the court] should allow this." Defense counsel replied:

As a member of the Bar, I've got a duty. I met with a client who doesn't wish to go forward with me. There have been some allegations, which I don't want to go in detail; I can meet at the bench should you wish. Some of them are very strong. There's an issue of money, which I've agreed, I'll give it back to him. But I cannot continue to represent him under the current condition of our relationship.

The prosecutor requested a postponement of trial due to the unavailability of the victim. Defense counsel then stated: “I’ve contacted Mr. McGann. He’s ready on the phone to see whatever date it is, make sure it’s clear on his schedule.”

The court subsequently postponed trial to October 23, 2023. The court stated to Mr. Chirikadzi, in pertinent part: “Please be advised, sir, if an attorney does not enter their appearance on your behalf by the time of the next trial, the [c]ourt may decide that you waive your right to have an attorney.” Mr. Chirikadzi stated that he understood. The court stated: “And the case could proceed with you without having an attorney, all right?” Mr. Chirikadzi replied: “Sure.”

The following colloquy then occurred:

[DEFENSE COUNSEL]: Your Honor, may I approach and put the details on record that I feel I need to[?]

THE COURT: If you want to.

* * *

[DEFENSE COUNSEL]: As I represented before in open court, our relationship has degraded to the point we’re basically fighting.

THE COURT: Uh-huh.

[DEFENSE COUNSEL]: Very close to violence.

THE COURT: There will be no violence.

[DEFENSE COUNSEL]: I’ve agreed – no, no, we’re good. I’ve agreed to return \$6,500. He’s talked to Terrence McGann. I’ve aided as much as I possibly could at this point. Even after certain accusations were made to me, I still attempted to renegotiate from a felony to a misdemeanor. I think I’ve just fulfilled the duties that I’ve had to under the rules.

So I wish him luck; I wish him no ill will. The discovery's still open and available to him in my office, which I have asked him to come and see. He can come and do that immediately after this hearing. I'll give him a USB, and we can move on. The \$6,500 –

THE COURT: Anything you want to tell me, sir? But don't tell me anything about the circumstances that led to the charges, okay?

[DEFENSE COUNSEL]: Don't talk about the case.

THE COURT: Don't tell me anything about the circumstances that led to the charges.

MR. CHIRIKADZI: Yes.

THE COURT: Is there anything you want to say to me?

MR. CHIRIKADZI: Yes. I paid \$10,000; I move that –

THE COURT: You what, sir?

MR. CHIRIKADZI: I paid \$10,000 cash.

THE COURT: Okay, okay.

MR. CHIRIKADZI: Let me tell – I'm not working right now. I need my money so I can pay to an attorney who wants to represent me, who wants to defend me, not to take a plea deal, I can't. I was taking fingerprints for my citizenship. I told him he has a pending case. He said, you don't need to plead guilty; you won't get it.

THE COURT: Well, all right.

[DEFENSE COUNSEL]: That's okay, I'm willing to –

THE COURT: [S]trike [defense counsel's] appearance. Strike his appearance.

On October 13, 2023, Mr. Chirikadzi, *pro se*, filed a “motion for continuance/postponement,” in which he contended that on October 12, 2023, he contacted Mr. McGann, who stated that “he . . . will not be available the week of October 23, 2023

[as he] is already double booked with two trials . . . that week, unless it gets postponed.”

The court denied the motion.

On October 23, 2023, Mr. Chirikadzi appeared for trial *pro se*, the Honorable Jeannie E. Cho presiding. When Mr. Chirikadzi stated that Mr. McGann was his attorney, was not present, and would “be able to talk for” Mr. Chirikadzi, the court replied, in pertinent part: “[Y]ou already filed a request to postpone this case based upon your wish to retain Mr. McGann. That motion has already been ruled upon and is concluded. So that is not to be relitigated this morning.” When Mr. Chirikadzi again stated that he would “go with the attorney going forward with the case,” the court stated:

Okay, let me make this clear. You had filed a motion to postpone this case on October the 13th of 2023. And in that motion, you indicated that you contacted your attorney, Mr. Terrence McGann, concerning representation, and that Mr. McGann informed you that he would not be available this week because he had other matters.

* * *

Now, this motion to postpone was already denied by the Court. I further find that there is no good cause for the Court to postpone this matter. You have been given ample opportunity, and indeed, you’ve had attorneys in the past. You have mentioned Mr. McGann now as a potential attorney to represent you several times in court. The last time would have been in September.

Now, an attorney is required by the rules of professional conduct that once they are retained – and that is a term of art – they must file a line of appearance with the court indicating that they represent you. That has not happened, and he is not here. And so the Court will find that you have waived your opportunity to have an attorney assist you, and you will be presenting your case yourself, as you were advised numerous times by the Court of what would happen.

The court subsequently commenced trial.

Mr. Chirikadzi contends that, for two reasons, the court “failed to comply with” Rule 4-215. Mr. Chirikadzi first contends that because “defense counsel stated that he could not ethically continue to represent [Mr. Chirikadzi] and moved to withdraw from the case,” Judge Bonifant “abused [his] discretion in concluding that there was no meritorious reason for [Mr. Chirikadzi] to discharge defense counsel.” But, Judge Bonifant did not explicitly conclude that there was no meritorious reason for Mr. Chirikadzi to discharge defense counsel. On the contrary, it appears that Judge Bonifant found the reasons given by defense counsel, specifically that his “relationship [with Mr. Chirikadzi] had degraded to the point [where they were] basically fighting . . . [v]ery close to violence,” counsel had “aided as much as [he] possibly could,” and Mr. Chirikadzi had made “certain accusations” against counsel, to be meritorious reasons to discharge counsel. Even if Judge Bonifant implicitly concluded that there was no meritorious reason for Mr. Chirikadzi to discharge counsel, the judge explicitly advised Mr. Chirikadzi, as required by Rule 4-215(e),¹ that “if an attorney [did] not enter [his or her] appearance on [Mr. Chirikadzi’s] behalf by the time

¹Rule 4-215(e) states, in pertinent part:

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.

of the next trial, the [c]ourt may decide that [he] waive[d his] right to have an attorney,” and “the case could proceed with [him not] having an attorney.” Hence, we conclude that Judge Bonifant did not violate Rule 4-215.

Mr. Chirikadzi next contends that Judge Cho “erred by finding . . . that [he] waived his right to counsel,” because “the court was obligated under . . . Rule 4-215(e) to give him adequate time to obtain a new attorney of his choosing.” But, Mr. McGann did not enter his appearance as required by Rule 4-214(a) (“[c]ounsel retained or appointed to represent a defendant shall enter an appearance within five days after accepting employment [or] after appointment”), and Mr. Chirikadzi does not cite any authority that required the court to wait for Mr. McGann to enter his appearance before commencing trial. On the contrary, the Supreme Court of Maryland has long stated that “for indigent defendants unable to retain private counsel, the right to counsel is but a right to effective legal representation; it is not a right to representation by any particular attorney.” *Fowlkes v. State*, 311 Md. 586, 605 (1988) (citations omitted). Here, Judge Cho noted that Judge Bonifant had already denied a request to postpone trial for a third time, that Mr. Chirikadzi had over a month to retain Mr. McGann, that Mr. Chirikadzi had been previously represented by counsel, that Mr. McGann had not entered his appearance, and that Mr. Chirikadzi had been advised “numerous times by the [c]ourt of what would happen” if he appeared for trial without

counsel. In light of these circumstances, we conclude that Judge Cho did not err in finding that Mr. Chirikadzi waived his right to counsel, and did not violate Rule 4-215.

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