

Monday, September 21, 2009

[Court of Appeals Reverses – Defendant Improperly Advised Before Waiving Counsel](#) *Brye v. State of Maryland*, No. 127, September Term, 2008.

The opinion is available [here](#) (pdf).

In an opinion filed September 18, 2009, the Maryland Court of Appeals reversed the judgment of the Court of Special Appeals, and remanded the case for trial. The Court reversed because the defendant was improperly and inconsistently advised of the allowable penalties of the crimes he was charged with, prior to accepting the defendant's waiver of counsel. The Court stated that this case exceeded its tolerant for insufficient advisements to a defendant before acceptance of a waiver of counsel.

As a background note, Rule 4-215 governs a defendant's waiver of counsel. One provision of this rule specifically states that a judge shall "[a]dvice the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any."

In *Brye*, the defendant appeared at trial with his attorney. When the defense attorney requested that the trial date be continued, the defendant objected and fired his attorney. His case was tried later that day, and he was convicted of second-degree assault, and sentenced to 10 years imprisonment.

The issue before the Court of Appeals was whether, having been inconsistently advised of the maximum penalty for the offenses with which he was charged (that is, two judges told him different things regarding the allowable penalties for his charges), the defendant's waiver of counsel was valid, given that he was not convicted of any offenses whose penalties were improperly advised to him.

Below, the Court of Special Appeals had held that any error that may have been committed was of no harm to the defendant, given that he was properly advised of the allowable penalties for second-degree assault, the only crime for which he was convicted. The Court disagreed.

"Incorrect advisements commingled with correct ones, rendered by a series of judges, cannot be ignored simply because a defendant is not convicted of the implicated charge or charges. . . . The analytical focus of a Rule 4-215 argument is at the point in the proceeding when the waiver is accepted . . . not what happened at trial."

Posted by [Brennan Sullivan and McKenna](#)