

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERRY HENRY,	§
	§ No. 552, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0301006617
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 6, 2008
Decided: February 19, 2008

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 19th day of February 2008, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26(c), his attorney’s motion to withdraw, and the State’s response thereto, it appears to the Court that:

(1) In April 2003, the defendant-appellant, Jerry Henry, pleaded guilty to Trafficking in Cocaine, Racketeering, and Conspiracy in the Second Degree. On the trafficking conviction, Henry was sentenced to 8 years at Level V, to be suspended after 3 years for decreasing levels of supervision. On the racketeering conviction, he was sentenced to 8 years at Level V, to be suspended after 3 years and successful completion of the Key

Program for 1 year Level IV Crest and 1 year Level III Crest Aftercare.¹ On the conspiracy conviction, he was sentenced to 2 years at Level V, to be suspended for 2 years at Level II. On September 17, 2007, the Superior Court responded to Henry's request for clarification of his sentence, confirming that he was to serve 1 year over the minimum mandatory Level V term on the racketeering conviction. This is Henry's direct appeal.²

(2) Henry's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and (b) the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.³

(3) Henry's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By

¹ There is a 2-year minimum mandatory Level V term on that charge. Del. Code Ann. tit. 11, §§ 1503; 1504; 4205(b) (2).

² We assume, without deciding, that Henry has appealed from a final order of the Superior Court.

³ *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

letter, Henry's counsel informed Henry of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete transcript. Henry also was informed of his right to supplement his attorney's presentation. Henry raises one issue for this Court's consideration.⁴ The State has responded to the position taken by Henry's counsel as well as the issue raised by Henry and has moved to affirm the Superior Court's judgment.

(4) Henry raises one issue for this Court's consideration. He claims that his sentencing order was intended to provide for a 2-year minimum mandatory term on the racketeering conviction, at which point he would be permitted to enter the Key Program. He requests that the sentencing order be modified accordingly.

(5) The transcript of the sentencing hearing reflects that, in sentencing Henry on the racketeering conviction, the Superior Court judge stated as follows: "After serving three years at Level V, the first two of which are minimum-mandatory, and upon successful completion of the Level V Key Program, I will suspend the balance of your Level V time for twelve months Level IV for the Crest Program, followed by one year Level

⁴ While Henry did not respond to his counsel's request for supplementation, he wrote a letter to his counsel in August 2007, which sets forth his claim. That letter prompted his counsel's September 2007 request for clarification of Henry's sentence.

3, including Crest Aftercare.” The sentencing order contains essentially the same language. There is nothing in the record reflecting that the Superior Court intended that Henry serve only 2 years at Level V on the racketeering conviction.

(6) This Court has reviewed the record carefully and has concluded that Henry’s appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Henry’s counsel has made a conscientious effort to examine the record and has properly determined that Henry could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger
Justice