

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRANDON OWENS,	§
	§ No. 440, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0511004652
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 21, 2008
Decided: March 5, 2008

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

ORDER

This 5th day of March, 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 October 2006, the defendant-appellant, Brandon Owens, pleaded guilty to Manslaughter and Possession of a Firearm During the Commission of a Felony in exchange for which the State dismissed charges of Murder in the First Degree and Conspiracy. In January 2007, the Superior Court sentenced Owens on the manslaughter conviction to 25 years incarceration at Level V, to be suspended after 10 years for 2 years at Level III and, on the weapon conviction, to 5 years at Level V. Thereafter, Owens

filed a motion for reduction of sentence on the grounds that his sentence for manslaughter was excessive in light of the TIS guidelines and the particular circumstances of the case. The Superior Court denied the motion. This is Owens' direct appeal from the Superior Court's sentencing order.

(2) Owens' 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.¹

(3) Owens' counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Owens' counsel informed Owens 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. Owens also was informed of his right to supplement his attorney's presentation. Owens responded with a brief that

¹ *Person 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).

raises one issue for this Court's consideration. The State has responded to the position taken by Owens' counsel as well as the issue raised by Owens and has moved to affirm the Superior Court's judgment.

(4) Owens raises one issue for this Court's consideration. He claims that the Superior Court's sentence on the manslaughter conviction constituted an abuse of discretion because it was excessive in light of the TIS guidelines and the particular circumstances of the case.

(5) In Delaware, appellate review of a sentence generally ends upon a determination that the sentence is within the statutory limits prescribed by the legislature.² In order for this Court to disturb a sentence on appeal, there must be a showing either that the sentence is illegal or that it constitutes an abuse of the Superior Court's discretion.³ The fact that the sentence exceeds the TIS guidelines does not afford a legal or constitutional right to appeal a sentence that is within the statutory limits.⁴

(6) In this case, it is undisputed that the sentence, while in excess of the TIS guidelines, was within the statutory limits and, therefore, not illegal. Moreover, the record does not reflect that the Superior Court abused its discretion when it sentenced Owens. As the Superior Court explained in

² *Mayer v. State*, 604 A.2d 839, 842 (Del. 1992).

³ *Weber v. State*, 655 A.2d 1219, 1221 (Del. 1995).

⁴ *Mayer v. State*, 604 A.2d at 845.

its order denying Owens' motion for sentence reduction, there were two major aggravating factors underlying the 25-year sentence for manslaughter--the killing stemmed from a substantial drug offense and Owens armed himself with a gun in anticipation of the drug deal.

(7) This Court has reviewed the record carefully and has concluded that Owens' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Owens' counsel has made a conscientious effort to examine the record and has properly determined that Owens 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