

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD SHEPHERD,	§
	§
Defendant Below-	§ No. 436, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0608020349
Plaintiff Below-	§
Appellee.	§

Submitted: January 22, 2008

Decided: April 21, 2008

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

ORDER

This 21st day of April, 2008, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In April 2007, the defendant-appellant, Donald Shepherd (Shepherd), pled guilty to one count of escape in the second degree and one count of felony shoplifting. The Superior Court found Shepherd to be an habitual offender pursuant to 11 Del. C. § 4214(a) and sentenced him on the escape charge to two years at Level V incarceration and, on the felony shoplifting charge, to two years at Level V incarceration, to be suspended in its entirety for two years at Level IV

Crest to suspended upon successful completion for one year at Level III probation. This is Shepherd's direct appeal.

(2) Shepherd's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Shepherd's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Shepherd's attorney informed him of the provisions of Rule 26(c) and provided Shepherd with a copy of the motion to withdraw and the accompanying brief. Shepherd also was informed of his right to supplement his attorney's presentation. Shepherd's only issue on appeal is a challenge to the reasonableness of his sentence. The State has responded to Shepherd's argument, as well as to the position taken by Shepherd's counsel, and has moved to affirm the Superior Court's judgment.

(3) 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) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this 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

(4) This Court has reviewed the record carefully and has concluded that Shepherd's appeal is wholly without merit and devoid of any arguably appealable issue. Shepherd does not dispute that he was eligible for sentencing as an habitual offender pursuant to 11 Del. C. § 4214(a). Moreover, the record reflects that Shepherd understood he faced a potential sentence of up to life imprisonment. The Superior Court's two-year sentence was proportionate to Shepherd's crimes and was well within the range of authorized punishments.² We find no abuse of the Superior Court's discretion in this case. We are satisfied that Shepherd's counsel has made a conscientious effort to examine the record and the law and has properly determined that Shepherd 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

¹ *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).

² *Mayer v. State*, 604 A.2d 839, 845 (Del. 1992).