IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTOINNE HARRIS,	§	
	§	
Defendant Below-Appellant,	§	No. 487, 2007
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. ID 9608016951
Plaintiff Below-Appellee.	§	
	§	

Submitted: January 30, 2008
Decided: April 22, 2008

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

O R D E R

This 22nd 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) The Superior Court found the defendant-appellant, Antoinne Harris (Harris), in violation of the terms of his probation. The Superior Court sentenced Harris on the VOP to eight years at Level V incarceration, to be suspended after serving six months for decreasing levels of supervision. This is Harris's appeal.[1]

[1] Harris had filed an untimely appeal from his VOP sentence in case No. 451, 2006. Ultimately, this Court rescinded Harris' VOP sentence and directed the Superior

(2) Harris' counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Harris' counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Harris' attorney informed him of the provisions of Rule 26(c) and provided Harris with a copy of the motion to withdraw and the accompanying brief. Harris also was informed of his right to supplement his attorney's presentation. Harris raised two issues for this Court's consideration. The State has responded to Harris' points, as well as the position taken by Harris' 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.[2]

Court to resentence Harris. The same sentence was reimposed. It is the resentencing from which Harris now appeals.

[2] *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).

(4) Harris first argues that the administrative search of his residence by probation officers was unconstitutional and the items seized from his home should not have been admitted at his VOP hearing. Harris further contends that his court-appointed counsel was ineffective for failing to raise this claim below. This Court, however, will not consider a claim of ineffective assistance of counsel for the first time on appeal.[3] Accordingly, we do not address Harris' second argument. Moreover, we find no merit to Harris' first claim that the items seized from his home should have been suppressed because his landlord could not consent to the search of Harris' residence.

(5) This Court previously has recognized that the "special nature of probationary supervision justif[ies] a departure from the usual warrant and probable-cause requirements for searches."[4] The legislative authority permitting probation officers to conduct searches of individuals under probation supervision is found in 11 Del. C. § 4321. Even if we assume, without deciding, that officers should have waited for Harris to arrive before entering his residence with his landlord's consent, the items still would have

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[3] Although Harris filed a postconviction petition raising this ineffective assistance of counsel claim, which the Superior Court denied, we found the Superior Court's postconviction ruling to be void *ab initio* as a result of our order rescinding Harris' VOP sentence. *See Harris v. State*, Del. Supr. No. 600, 2006, Berger, J. (Mar. __, 2008)

[4] *Fuller v. State*, 844 A.2d 290, 292 (Del. 2004)

been found in Harris' home after his arrival. Thus, the items would have been admissible under the inevitable discovery doctrine.[5] Accordingly, there was no basis for suppression of the evidence.

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

[5] *Hardin v. State*, 844 A.2d 982, 987 (Del. 2004).