

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DENNIS O. WILLIAMS,	§
	§
Defendant Below-	§ No. 139, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0606016740
Plaintiff Below-	§
Appellee.	§

Submitted: September 29, 2008

Decided: December 15, 2008

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 15th day of December 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 October 2007, a Superior Court jury convicted the defendant-appellant, Dennis Williams (Williams), of carrying a concealed deadly weapon and possession of a deadly weapon by a person prohibited. The Superior Court sentenced Williams to a total period of ten years at Level V incarceration to be suspended after serving one year for decreasing levels of supervision. This is Williams' direct appeal.

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

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).

(4) The record at trial fairly supports the following version of events. At approximately 1:00 a.m. on June 22, 2006, police and probation officers with the Governor's Task Force stopped a car that Williams was driving because it had a broken headlight. The officers had been watching the car, which had been parked in a convenience store parking lot for about fifteen minutes. The only passenger in the car was Williams' co-defendant, Aisha Torres, who was the owner of the vehicle. Upon questioning the two, the officers learned that both were on probation. The officers then searched the vehicle and found a loaded pistol concealed under a gym bag.

(5) Williams and Torres each gave a statement to the police. Both denied that the gun belonged to them, and they gave conflicting accounts of the events of the evening leading up to their arrest. Torres initially denied knowing anything about a gun in her car. Both Torres and Williams told police that a third individual, named Whoop or Mook, had been in the car with them before they were viewed by the officers in the parking lot, though their respective versions of events differed regarding when Whoop joined them in the car that night. Williams stated that gun must have belonged to Whoop because Whoop had told him that he was "dirty."

(6) Torres later pled guilty to a reduced charge of carrying a concealed dangerous instrument, a misdemeanor. At Williams' trial, she

testified that she had lied in her statement to police because the gun did belong to her. The jury convicted Williams of carrying a concealed deadly weapon and possession of a deadly weapon by a person prohibited. The jury could not reach a verdict on a charge of possession of drug paraphernalia, and the State later dismissed this charge. This appeal followed.

(7) In response to counsel's Rule 26(c) brief, Williams' filed a document containing seventeen numbered paragraphs with overlapping issues. The gist of Williams' main argument on appeal is that the police officers lied about the reason for stopping the car because there was no broken headlight. Thus, Williams contends that the search of the car was illegal and the evidence seized as a result of the search should have been suppressed. Williams also argues that the officers lied about the statements Williams made following his arrest, which Williams contends were in violation of his Miranda rights. Williams also contends that his jury was disproportionately white, that one of the officers knew one of the jurors and thus a mistrial was warranted, the prosecutor engaged in misconduct, and certain objectionable testimony should have been excluded. None of these issues was raised to the Superior Court, however, and thus will not be considered on appeal in the absence of plain error.²

² See Del. Supr. Ct. R. 8 (2008).

(8) Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights that it jeopardizes the fairness and integrity of the trial process.³ Plain error review is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice.⁴

(9) None of the errors that Williams alleges constitutes plain error. Witnesses testified that Williams' vehicle was stopped because of a broken headlight, that the search of the vehicle occurred after it was determined that Williams and Torres were probationers, and that both Williams and Torres voluntarily gave statements to the police after waiving their Miranda rights. To the extent that Williams now challenges the accuracy and credibility of this testimony, those issues of credibility were for the jury to decide.⁵ We find no error, plain or otherwise, with respect to Williams' contentions that his constitutional rights were violated in this case.

(10) Moreover, to the extent Williams' implies that his attorney was ineffective for failing to challenge the composition of the jury and to object

³ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1996).

⁴ *Id.*

⁵ *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

to certain testimony and questioning by the State, such claims of ineffective assistance of counsel may not be raised for the first time on direct appeal.⁶

(11) This Court has reviewed the record carefully and has concluded that Williams' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Williams' counsel has made a conscientious effort to examine the record and the law and has properly determined that Williams 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/ Myron T. Steele
Chief Justice

⁶ *Duross v. State*, 494 A.2d 1265, 1267 (Del. 1985).