

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KWAME OWENS,	§	
	§	No. 176, 2013
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in
v.	§	and for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1205024195
Appellee.	§	

Submitted: August 30, 2013
Decided: November 4, 2013

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

O R D E R

This 4th day of November 2013, 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, it appears to the Court that:

(1) The appellant, Kwame Owens, was arrested and subsequently indicted for seriously injuring Anthony Dorman in a fight on May 29, 2012 that took place in front of Dorman's Wilmington residence. The fight was witnessed by Owens' girlfriend, Na'Tasha Walley, and Walley's two children, ages five and one. Dorman is the biological father of Walley's five-year old child.

(2) At the conclusion of a two-day jury trial in January 2013, Owens was convicted, as charged, of Assault in the Second Degree and Endangering the Welfare of a Child. On March 28, 2013, the Superior Court sentenced Owens to a total of six years at Level V suspended after eighteen months for four years at Level IV, suspended after six months for eighteen months of probation. This is Owens' direct appeal.

(3) On appeal, Owens' appellate counsel ("Counsel")¹ has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)").² Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Owens, through Counsel, has submitted several issues for the Court's consideration. The State has responded to Owens' issues and has moved to affirm the Superior Court's judgment.

(4) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that Counsel has made a conscientious examination of the record and the law for arguable claims.³ The Court must also conduct its own review of the record and determine

¹ Owens was represented by different counsel at trial.

² See Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).

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).

whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.⁴

(5) In his written submission on appeal, Owens questions (i) whether there was sufficient evidence to convict him of Assault in the Second Degree and (ii) the validity of the Endangering the Welfare of a Child charge. Also, Owens claims that he “never wanted a jury trial,” and that his sentence is too long. None of Owens’ claims has merit.

(6) To the extent Owens challenges the validity of the grand jury indictment, his claim is unavailing. The purpose of an indictment is to place a defendant on notice of the crimes charged.⁵ Owens does not contend, and the record does not reflect, that the indictment in this case failed to place him on notice of the crimes with which he was charged.

(7) Under Delaware law, the jury is the sole trier of fact, responsible for determining witness credibility and resolving conflicts in the testimony.⁶ When a defendant challenges the sufficiency of the evidence, the Court’s standard of review is whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant

⁴ *Id.*

⁵ Del. Super. Ct. Crim. R. 7(c); *Dawkins v. State*, 2005 WL 2254197 (Del. Sept. 15, 2005) (citing *Malloy v. State*, 462 A.2d 1088, 1092 (Del. 1983)).

⁶ *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

guilty beyond a reasonable doubt.⁷ It is entirely within the discretion of the jury to accept one witness' testimony and to reject the conflicting testimony of other witnesses.⁸

(8) In this case, Dorman and Owens each testified that the other was the aggressor. Dorman testified that Owens punched him in the jaw, knocked him to the ground, and then slammed his head against the pavement, breaking his jaw in three places. Owens testified that he punched Dorman to protect Walley and the children and to prevent Dorman from attacking him. Walley testified that Dorman reached into her car and starting "choking [Owens] or grabbing him or something." Dorman's neighbor testified that she saw Owens "lunge" at Dorman and slam Dorman to the ground.

(9) After a thorough review of the record in this case, we conclude that the State presented sufficient evidence for the jury to reject Owens' justification defense and to conclude, beyond a reasonable doubt, that Owens committed Assault in the Second Degree when he recklessly or intentionally caused serious physical injury to Dorman. Furthermore, because Owens committed Assault in the Second Degree, a crime of

⁷ *Robertson v. State*, 596 A.2d 1345, 1355 (Del. 1991).

⁸ *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982).

violence,⁹ in the presence of Dorman’s child, the jury properly convicted Owens of Endangering the Welfare of a Child.¹⁰

(10) Owens’ next claim, that he “never wanted a jury trial” is belied by the record. In a colloquy with the Superior Court immediately before jury selection, Owens rejected a plea offer and expressly indicated that he had decided to proceed to trial.¹¹

(11) Finally, Owens’ dissatisfaction with the length of his sentence is unavailing. In Delaware, appellate review of criminal sentences is limited to a determination that the sentence is within the statutory limits.¹² For Assault in the Second Degree, a class D felony, Owens was sentenced to five years at Level V suspended after eighteen months for four years at Level IV work release suspended after six months for probation.¹³ For Endangering the Welfare of a Child, a class A misdemeanor, Owens was sentenced to one

⁹ Del. Code Ann. tit. 11, § 4201(c) (Supp. 2013).

¹⁰ See Del. Code Ann. tit. 11, § 1102(a)(4) (Supp. 2013) (providing that a person is guilty of endangering the welfare of a child when “[t]he person commits any violent felony . . . knowing that such felony . . . was witnessed, either by sight or sound, by a child less than 18 years of age who is a member of the person’s family or the victim’s family”).

¹¹ Trial tr. at 8-10 (Jan. 15, 2013).

¹² *Siple v. State*, 701 A.2d 79, 83 (Del. 1997) (citing *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992)).

¹³ Del. Code Ann. tit. 11, § 612 (Supp. 2013).

year at Level V suspended for one year of probation.¹⁴ Owens' sentences were well within the statutory range for his offenses.¹⁵

(12) The Court has reviewed the record carefully and has concluded that Owens' appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Owens could not raise a meritorious claim on direct 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/ Henry duPont Ridgely
Justice

¹⁴ Del. Code Ann. tit. 11, § 1102(b)(4).

¹⁵ Del. Code Ann. tit. 11, §§ 4205(b)(4), 4206(a) (2010).