

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REGINALD L. WILKERSON,	§	
	§	No. 177, 2000
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for Kent County
	§	Cr.A.No. IK99-07-0549.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9906018685

Submitted: October 20, 2000
Decided: December 4, 2000

Before **VEASEY, Chief Justice, BERGER and STEELE**, Justices.

ORDER

This 4th day of December 2000, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26(c) (“Rule 26(c)”), his attorney’s motion to withdraw, and the State’s response thereto, it appears to the Court that:

(1) In February 2000, following a two-day jury trial in the Superior Court, the defendant-appellant, Reginald L. Wilkerson, was convicted of one count of Delivery of a Narcotic Schedule II Controlled Substance, i.e., crack cocaine. The Superior Court sentenced Wilkerson to ten years at Level V incarceration, suspended after a mandatory five years,

for 12 months at the Level IV Crest Program, followed by Level III and II probation. This is Wilkerson's direct appeal.

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

(4) Wilkerson argues on appeal that his trial counsel was ineffective. Specifically, Wilkerson claims that his counsel failed to subpoena certain witnesses for trial. Second, Wilkerson argues that the evidence adduced at trial was insufficient to support his conviction. Specifically, Wilkerson complains that a description of Wilkerson provided by the chief investigating officer was insufficient to rebut Wilkerson's mistaken identity defense.

(5) The record reflects that Delaware State Police Detective Kimberly Cook ("Det. Cook") was the State's pivotal witness at trial. Det. Cook testified that, in May 1999, she and a confidential informant ("CI") worked an undercover operation targeted at "Willow Grove," a well-known drug area near Camden, Delaware. Det. Cook testified that she and the CI had three contacts with Wilkerson at Willow Grove in May 1999. During one of those contacts, on May 10, 1999, Det. Cook bought crack cocaine from Wilkerson.

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).

(6) During her direct examination, Det. Cook testified that the person she purchased crack cocaine from on May 10, 1999, i.e., Wilkerson, was “missing teeth.” On cross-examination, however, Det. Cook testified that, in a previous written report, she had described Wilkerson as “missing a front tooth.” Wilkerson testified at trial that, at the present time, and in May 1999, he was missing seven teeth from the front of his mouth, as a result of an automobile accident that he was in five or six years ago. Wilkerson permitted the jury to view his mouth and teeth.

(7) In his direct examination at trial, Wilkerson testified that, in May 1999, he was living in Willow Grove in his mother’s house. Wilkerson testified that he remembered Det. Cook from three or more visits that she made to Willow Grove in May 1999.

(8) Wilkerson testified that during a visit to Willow Grove on or about May 10, 1999, Det. Cook and another woman approached him and asked to buy crack cocaine from him. Wilkerson testified that he told Det. Cook and the other woman that he used drugs, but that he did not sell them. Wilkerson further testified that, on that day, he observed Det. Cook buying drugs from an individual named Calvin Hoskins. According to Wilkerson, Calvin Hoskins is missing a front tooth. Wilkerson testified

that he also observed Det. Cook buying drugs from an individual named Charles Livingston.

(9) When a defendant claims that the evidence is insufficient to support a guilty verdict, the burden is on the defendant to show that after reviewing the evidence in the light most favorable to the prosecution, a “rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”² Under Delaware law, the jury is the sole trier of fact, responsible for determining witness credibility and resolving conflicts in the testimony.³ It is entirely within the discretion of the jury to accept one witness’ testimony and reject the conflicting testimony of that witness or that of another witness.⁴

(10) In this case, it was entirely within the purview of the jury to credit Det. Cook’s testimony identifying Wilkerson as the person from whom she bought crack cocaine on May 10, 1999, notwithstanding the conflicting testimony presented by Wilkerson and the alleged conflicting descriptive testimony presented by Det. Cook. The evidence presented by the State in this case was sufficient to support the jury’s verdict. Consequently, Wilkerson’s claim of insufficient evidence is without merit.

² *Davis v. State*, Del. Supr., 453 A.2d 802, 803 (1982) (quoting *Jackson v. Virginia*, 443 U.S. 307, 317 (1979)).

³ *Tyre v. State*, Del. Supr., 412 A.2d 326, 330 (1980).

(11) Wilkerson's second claim on appeal is that he received ineffective assistance of counsel at trial. Delaware law is well-settled, however, that on direct appeal, this Court will not consider claims of ineffective assistance of counsel that were not raised in the trial court.⁵ Accordingly, we decline to review this claim.

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

⁴ See *Pryor v. State*, Del. Supr., 453 A.2d 98, 100 (1982).

⁵ *Duross v. State*, Del. Supr., 494 A.2d 1265 (1985); Supr. Ct. R. 8.