

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM C. PURNELL,	§	
	§	No. 20, 2000
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County
	§	Cr.A.No. VS94-11-0361-04
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9411007006

Submitted: August 2, 2000
Decided: September 15, 2000

Before **VEASEY, Chief Justice, WALSH and HOLLAND**, Justices.

ORDER

This 15th day of September 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) On February 7, 1995, the defendant-appellant, William C. Purnell, pleaded guilty to Possession with Intent to Deliver Cocaine. After a pre-sentence investigation, Purnell was sentenced, on March 24, 1995, to four years at Level V, with credit for time served, suspended for 12

months at Level IV Home Confinement, followed by three years at Level II.

(2) On July 28, 1995, the Superior Court found Purnell guilty of violating his Level IV status. Purnell was sentenced to 36 months at Level V, with credit for time served, suspended after 40 days for eight months at Level IV Work Release, followed by one year at Level III, followed by two years at Level II.

(3) On February 28, 1997, the Superior Court found Purnell guilty of violation of probation (“VOP”). Purnell was sentenced to 33 months at Level V, with credit for time served, suspended after 90 days for three years at Level III.

(4) On March 16, 1998, the Superior Court again found Purnell guilty of VOP and sentenced him to 30 months at Level V, with credit for time served, suspended after 30 days for six months at Level IV Home Confinement or Work Release, followed by 23 months at Level II. On May 29, 1998, the sentence was amended to suspend the balance of the Level IV sentence and to place Purnell at Level III for four months and 15 days, followed by 23 months at Level II probation.

(5) On January 7, 2000, the Superior Court, for the fourth time, adjudged Purnell guilty of VOP. The Superior Court found that Purnell had failed to report to his probation officer as required. On March 27, 2000, the Superior Court sentenced Purnell to two years and four months at Level V, with credit for time served, suspended for one year at Level IV Work Release, followed by one year and four months at Level III. This appeal followed.

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

(7) 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

(8) On appeal, Purnell claims: (i) that he was not on Superior Court Level III probation at the time he was charged with VOP; and (ii) that his probation officer, Kevin Walls (“Walls”), lied during the January 7 VOP hearing. Purnell’s contentions are without merit.

(9) Purnell disputes that he was on Superior Court Level III probation at the time he was charged with VOP. Purnell concedes, however, that he was on Level II probation. The Superior Court found that the condition to report applied regardless of whether Purnell was at Level II or Level III, and that Purnell had violated that condition and thus was guilty of VOP.

¹ *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*,

(10) Purnell disputes aspects of Walls' testimony at the hearing. Purnell contends that Walls was not his probation officer in both the Superior Court and the Court of Common Pleas, as Walls testified, and that Purnell did not, as Walls testified, flee from Walls when Walls spotted Purnell in Ellendale in July 1999. Purnell admitted at the hearing, however, that he had no contact with Walls from mid-June until November 1999. Accordingly, the Superior Court found that Purnell failed to report to Walls as required, and that Purnell was guilty of VOP.

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

486 U.S. 429, 442(1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

s/Joseph T. Walsh
Justice