

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER WALLS,	§
	§
Defendant Below-	§ No. 302, 2004
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN98-02-1384
Plaintiff Below-	§ Cr. ID 9802012831
Appellee.	§

Submitted: December 21, 2004

Decided: January 31, 2005

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

ORDER

This 31st day of January 2005, 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 June 2004, the Superior Court sentenced the defendant-appellant, Christopher Walls, for violating the terms of four different probationary sentences by committing a new criminal offense. The Superior Court initially sentenced Walls on all four VOPs to a total period of 26 months at Level V incarceration. The Superior Court later corrected its order by eliminating the violations associated with three of the probationary sentences because Walls previously had been discharged as unimproved

from those three probationary sentences. The corrected sentencing order imposed 18 months at Level V incarceration on one VOP charge. This is Walls' appeal from the Superior Court's corrected sentencing order.

(2) Walls' counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Walls' counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Walls' attorney informed him of the provisions of Rule 26(c) and provided Walls with a copy of the motion to withdraw and the accompanying brief. Walls also was informed of his right to supplement his attorney's presentation. Walls has raised several issues for this Court's consideration. The State has responded to the position taken by Walls' 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.¹

(4) Walls raises four issues for the Court's consideration. First, he contends that the Superior Court erred in sentencing him for violating probationary sentences from which he already had been discharged. Second, Walls contends that he was prejudiced by the delay between his arrest date and the VOP hearing date. Third, Walls contends that his VOP sentence is excessive. Finally, Walls contends that he did not receive proper notice of the alleged VOP under Superior Court Criminal 32.1.

(5) With respect to the first issue, the record clearly does not support Walls' claim. Although the Superior Court's original order sentenced Walls for violating probationary sentences from which he previously had been discharged as unimproved, the Superior Court later corrected that order so that Walls' VOP sentence reflected Walls' violation of probation with respect to an earlier robbery sentence. Walls was still on probation as to that sentence at the time he violated. Walls contention to the contrary is not supported by the record. Although the Superior Court previously had discharged Walls from the TASC supervision associated with

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).

his robbery sentence, the Superior Court had never discharged him from probation. Accordingly, this first claim is without merit.

(6) Walls next asserts that he was prejudiced by the 11 month delay between his arrest on the VOP charge and his VOP hearing. The record, however, reflects that Walls had requested that the VOP charges be continued until after his new criminal charges were resolved in the Court of Common Pleas. Because the delay is attributable to Walls, he cannot now claim prejudice. We find no merit to this contention.

(7) Walls next argues that his VOP sentence was excessive because it exceeded both his probation officer's recommendation and the sentencing guidelines. The sentencing guidelines, however, are voluntary and nonbinding. Thus, they provide no basis for appeal.² Moreover, the trial judge noted that Walls had a history of criminal violence and that his new charges were crimes of violence. Under these circumstances, we find no abuse of the trial judge's discretion in sentencing Walls to eighteen months in prison on the VOP charge.

(8) Finally, Walls contends that he did not receive proper notice of the VOP charges against him. Walls knew, however, that new criminal

² *Benge v. State*, 2004 WL 2743431 (Del. Nov. 12, 2004).

charges would constitute a violation of his probation. Walls requested that the VOP proceedings wait until the new criminal charges were resolved. Walls pled guilty to the new charges knowing that his guilty plea would constitute a violation of probation on his prior sentence. Accordingly, even assuming Walls did not receive written notice of the VOP charges, he clearly suffered no prejudice in that regard.

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