

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD SUCHOMEL,	§	
	§	
Defendant Below-	§	No. 551, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. Nos. VN02-10-0091-01
	§	VN02-10-0091-02
Plaintiff Below-	§	
Appellee.	§	

Submitted: May 20, 2005

Decided: July 19, 2005

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

**ORDER**

This 19<sup>th</sup> day of July 2005, upon consideration of the appellant's brief pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Edward Suchomel, pleaded guilty to Possession of Heroin Within 300 Feet of a Park. He was sentenced to 8 years incarceration at Level V, to be suspended after 6 months for probation. In December 2003, Suchomel was found to have committed a violation of probation ("VOP"). He was sentenced to 7½ years incarceration at Level V, to be suspended for Level IV Crest and Level III Crest Aftercare. Pursuant to Suchomel's request, the Superior Court modified his sentence on March 2, 2004 to eliminate the Crest

program. While Suchomel was later charged with a second VOP, a hearing on that VOP was never held.

(2) While serving his Level V sentence pursuant to the March 2004 sentencing order, Suchomel filed a petition for a writ of habeas corpus on the ground that he had not been afforded a hearing in connection with his second VOP. On November 19, 2004, the Superior Court held a hearing pursuant to Suchomel's petition for a writ of habeas corpus, with Suchomel present, and imposed the March 2, 2004 modified sentence.<sup>1</sup> Under that sentencing order, Suchomel was to serve 7½ years of Level V mental health counseling and treatment, anger management counseling and treatment, and the New Visions program, and, upon successful completion, the balance of the sentence to be served at decreasing levels of probation. This is Suchomel's direct appeal.

(3) Suchomel's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). 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

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<sup>1</sup> The Superior Court also dismissed Suchomel's second VOP and denied his petition for a writ of habeas corpus. As the Superior Court judge explained, the modified sentence that was imposed stemmed not from the second VOP, but from a TASC recommendation concerning Suchomel's suitability for mental health treatment.

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.<sup>2</sup>

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

(5) Suchomel raises four issues for this Court's consideration. He claims that: 1) his counsel provided ineffective assistance; 2) his appearance before the Superior Court was unnecessarily delayed; 3) the Superior Court judge acted arbitrarily and abused his discretion; and 4) the Superior Court judge did not conduct a conscientious inquiry at the hearing.

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<sup>2</sup> *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) Suchomel's claims are unavailing. His ineffective assistance of counsel claim may not be raised for the first time in his direct appeal.<sup>3</sup> His claims of impropriety on the part of the Superior Court judge are unsupported by the transcript of the November 19, 2004 hearing. Moreover, Suchomel has made no showing that any delay in connection with his sentencing order resulted in any prejudice to him.

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

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<sup>3</sup> *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).