

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MOSES WILLIAMS,	§
	§ No. 54, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0406006249
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 27, 2005
Decided: September 29, 2005

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 29th day of September 2005, 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 thereto, it appears to the Court that:

(1) The defendant-appellant, Moses Williams, was found guilty by a Superior Court jury of Burglary in the Third Degree, Misdemeanor Theft, Criminal Impersonation, Resisting Arrest, and Conspiracy in the Second Degree. On the burglary conviction, he was sentenced to 2 years and 6 months incarceration at Level V, to be suspended after 6 months for Level

IV probation. He was sentenced to a 1-year suspended sentence on each of the remaining convictions. This is Williams' direct appeal.

(2) Williams' trial 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 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

(3) Williams' counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Williams' counsel informed Williams 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. Williams also was informed of his right to supplement his attorney's presentation. Williams has responded with a brief that raises three issues for this Court's consideration. The State has responded to the position taken by Williams'

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).

counsel as well as the issues raised by Williams and has moved to affirm the Superior Court's judgment.

(4) Williams raises three issues for this Court's consideration. He claims that: a) he did not receive proper notice of the charges against him because he was never arraigned; b) there was insufficient evidence presented at trial to support his convictions; and c) his sentence on the burglary conviction is illegal.

(5) The evidence presented at trial was as follows. On June 7, 2004, John Eldridge parked his car in the parking lot of the Newark Public Library in Newark, Delaware. He saw two young African American men walking from vehicle to vehicle apparently checking for unlocked doors. He observed the two men enter an unlocked car, but was unable to see what they were doing inside. Eldridge used his cell phone to call 911. As the two men approached his vehicle, Eldridge entered the library and waited for the police to arrive. When the police arrived, they spotted the two men and chased them through the parking lot, across Library Avenue and toward College Square Shopping Center.

(6) Officer Thomas Rutecki of the Newark Police Department testified that he was one of the officers called to the scene. As he entered the library parking lot, he saw defendant Williams walking between two parked

vehicles. He observed that Williams was wearing a black hat, black pants and a black shirt. When Williams caught sight of Officer Rutecki, he, along with another man, fled across Library Avenue toward College Square Shopping Center. Officer Rutecki pursued the two men on foot. When he reached the shopping center, he observed the two men running through an alleyway, but then lost track of them. After receiving a tip, Officer Rutecki was able to arrest one of the men, who had gone into a Grotto's Pizza shop next to the Blockbuster Video store. After receiving another tip from a Blockbuster employee, he was able to arrest Williams, who had entered the store and pretended to be filling out an employment application.

(7) At the time of Williams' arrest, he was wearing a white shirt and black pants. He had a black hat with him. He also had a cell phone in his possession that had been taken from a car in the library parking lot. Williams identified himself with a false name. Officer Rutecki took Williams back to the library parking lot for a show-up with Eldridge. Eldridge identified Williams by his clothing and later testified that he also recognized Williams by his facial features. At trial, Eldridge was not able to positively identify Williams as one of the men he saw in the library parking lot. The Blockbuster employee identified Williams as the man who had entered the store and pretended to be filling out an employment application.

The employee also stated that Williams was wearing a black shirt with a white one underneath. Officer Rutecki later learned Williams' true identity by reviewing a series of police photographs.

(8) Williams' first claim is that he did not receive proper notice of the charges against him because he was never arraigned. The failure to arraign a defendant is not necessarily fatal to a conviction. This Court has held that a waiver of arraignment may be implied by the defendant's participation in the trial and other circumstances.² In this case, the record reflects that Williams was assigned a public defender in the initial stages of his prosecution and that he had a preliminary hearing and case review prior to trial. He, thus, was on notice of the charges against him. Under the circumstances of this case, we do not find that the apparent lack of an arraignment was in any way prejudicial to Williams. We, therefore, find his first claim to be without merit.

(9) Williams' next claim is that the evidence presented at trial was insufficient to support his convictions. In reviewing a claim of insufficiency of the evidence, this Court must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have

² *Ray v. State*, 262 A.2d 643, 644-45 (Del. 1970).

found the essential elements of the crime beyond a reasonable doubt.³ In so doing, we make no distinction between direct and circumstantial evidence.⁴ Moreover, it is for the jury to weigh the relative credibility of the witnesses and reconcile any conflicting testimony.⁵ Our review of the record does not support Williams' claim. There clearly was sufficient evidence presented at trial to support Williams' convictions of Burglary in the Third Degree,⁶ Misdemeanor Theft,⁷ Criminal Impersonation,⁸ Resisting Arrest⁹ and Conspiracy in the Second Degree.¹⁰

(10) Williams' final claim is that his sentence on the burglary conviction is illegal. While Williams bases his claim on the fact that his sentence exceeds the SENTAC guidelines, it is well-settled that the SENTAC guidelines are voluntary and non-binding and, standing alone, can

³ *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997).

⁴ *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

⁵ *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

⁶ Del. Code Ann. tit. 11, § 824 (“A person is guilty of burglary in the third degree when the person knowingly enters or remains unlawfully in a [vehicle] with intent to commit a crime therein.”)

⁷ Del. Code Ann. tit. 11, § 841 (a) (“A person is guilty of theft when the person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it.”)

⁸ Del. Code Ann. tit. 11, § 907(1) (“A person is guilty of criminal impersonation when the person . . . [i]mpersonates another person . . . intending to obtain a benefit”)

⁹ Del. Code Ann. tit. 11, § 1257 (“A person is guilty of resisting arrest when the person . . . intentionally flees from a peace officer who is effecting an arrest.”)

¹⁰ Del. Code Ann. tit. 11, § 512 (“A person is guilty of conspiracy in the second degree when, intending to promote or facilitate the commission of a felony, the person . . . [a]grees with another person . . . that they . . . will engage in conduct constituting the felony”)

not support a claim of an illegal sentence.¹¹ Williams was convicted of Burglary in the Third Degree, which is a Class F felony.¹² While the Superior Court was authorized to impose a sentence of up to 3 years at Level V,¹³ Williams' sentence was only 2 years and 6 months at Level V, 6 months less than the statutory limit. As such, we find Williams' claim of an illegal sentence to be without merit.

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

¹¹ *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989).

¹² Del. Code Ann. tit. 11, § 824.

¹³ Del. Code Ann. tit. 11, § 4205(b) (6).