

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CANDIDO A. FELIX,	§
	§ No. 14, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0506010024
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 18, 2006
Decided: July 14, 2006

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

ORDER

This 14th day of July 2006, 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) In October 2005, the defendant-appellant, Candido A. Felix, pleaded guilty to Driving Under the Influence of Alcohol (“DUI”), Driving Without Proof of Insurance, Driving an Unsafe Motor Vehicle, Displaying a Fictitious/Cancelled Registration Plate, Operating a Motor Vehicle Without Possessing a Registration Card, Driving While License Suspended or Revoked, and Driving After Judgment Prohibited. In December 2005, the State dismissed the charge of Driving While License Suspended or Revoked.

Candido was sentenced on the remaining charges to a total of 8 years of Level V incarceration, to be suspended after 1 year and successful completion of the Greentree Program for decreasing levels of probation.

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

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).

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

(4) Felix raises four issues for this Court's consideration. He claims that: a) his guilty plea was coerced because his counsel was not prepared to go to trial; b) his bail was improperly revoked; c) he should have been charged with Failure to Reinstate License rather than Driving After Judgment Prohibited; and d) he was improperly sentenced for a fourth-offense DUI.

(5) Felix' first claim is that his guilty plea was coerced because his counsel was not prepared to go to trial. In order to prevail on a claim of ineffective assistance of counsel in connection with a guilty plea, a defendant must show that, but for his counsel's unprofessional errors, he would not have pleaded guilty but would have insisted on proceeding to trial.² The defendant must make concrete allegations of actual prejudice and substantiate them, or risk summary dismissal.³

(6) Felix has presented no factual support for his claim that, but for his counsel's unprofessional errors, he would not have pleaded guilty but would have insisted on proceeding to trial. The transcript of Felix' plea colloquy reflects that his guilty plea was knowing and voluntary and that he

² *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

³ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

was satisfied with his counsel's performance. In the absence of clear and convincing evidence to the contrary, Felix is bound by those representations.⁴ For all of these reasons, we find Felix' first claim to be without merit.

(7) Felix' second claim is that his bail was improperly revoked. The transcript of the plea colloquy reflects that, after entering his guilty plea, Felix requested a two-day grace period before reporting to prison. After accepting Felix' guilty plea, however, the Superior Court denied his request for a two-day grace period and revoked his bail on the ground that the DUI conviction carried a minimum mandatory sentence. The judge noted that it was standard practice in the Superior Court to revoke bail under such circumstances. There is no constitutional right to bail in the post-conviction, pre-sentencing period⁵ and there was no abuse of discretion on the part of the Superior Court in revoking Felix' bail. We, therefore, find Felix' second claim to be without merit.

(8) Felix' third claim is that he should have been charged with Failure to Reinstate License rather than Driving After Judgment Prohibited. Because Felix' voluntary guilty plea constitutes a waiver of any alleged

⁴ *Somerville v. State*, 703 A.2d 629, 631-32 (Del. 1997).

⁵ *State v. Flowers*, 330 A.2d 146, 148-49 (Del. 1974).

defects or errors occurring prior to the entry of the plea,⁶ we find that this claim, too, is without merit.

(9) Felix' final claim is that he was improperly sentenced for a fourth-offense DUI under Del. Code Ann. tit. 21, § 4177(d) (4). He contends that only his DUI convictions after 1995, the year § 4177 was amended, should be counted as predicate offenses. Felix' argument is incorrect as a matter of law. Del. Code Ann. tit. 21, § 4177B(e) (2) expressly states: "For sentencing pursuant to § 4177(d) (4) of this title there shall be no time limitation and all prior or previous [DUI] convictions or offenses . . . shall be considered for sentencing under § 4177(d) (4)." We, therefore, find Felix' final claim to be without merit.

(10) This Court has reviewed the record carefully and has concluded that Felix' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Felix' counsel has made a conscientious effort to examine the record and has properly determined that Felix could not raise a meritorious claim in this appeal.

⁶ *Downer v. State*, 543 A.2d 309, 311-12 (Del. 1988).

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