

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NORMAN X. BECKER,	§
	§ No. 148, 2006
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. 0410016765
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 8, 2006
Decided: December 12, 2006

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

ORDER

This 12th day of December 2006, 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, Norman X. Becker, was found guilty by a Superior Court jury of two counts of Robbery in the First Degree and one count of Attempted Carjacking in the First Degree. On the first robbery conviction, he was sentenced as a habitual offender to life in prison.¹ On the second robbery conviction, he was sentenced to 10 years incarceration at Level V, to be suspended after 7 years for 2 years of Level III probation. On

¹ Del. Code Ann. tit. 11, § 4214(b).

the carjacking conviction, he was sentenced to 5 years incarceration at Level V, to be suspended after 3 years for 2 years at Level III probation. This is Becker's direct appeal.

(2) Becker'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 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.²

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

² *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).

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

(4) Becker raises two issues for this Court's consideration. He claims: (a) he was improperly prevented from presenting his history of mental health problems to the jury; and (b) the charges brought against him were excessive, resulting in excessive sentences.

(5) The evidence presented at trial established the following. On October 20, 2004, at approximately 3:45 p.m., Becker walked into the Wilmington Trust Company building at 1001 N. Market Street, Wilmington, Delaware. He gave a teller named Damon Marable a blank deposit slip with the words "give me all of your money now" written on the back. Becker then moved his right hand back towards his hip as if he had a weapon in his pocket. Marable handed Becker a number of bills, which Becker placed in his pockets. As he was leaving the bank, Becker apologized to Marable.

(6) A couple of blocks from the bank, Becker approached a pick-up truck parked at the corner of 9th and Shipley Streets. Sitting in the truck was Christopher Ventresca, a building contractor who had been working at a nearby office building. Becker, looking "crazed," tried to pull Ventresca out of the truck, saying that he had just robbed a bank, had a gun, and would kill Ventresca if he didn't get out of the truck. During the struggle, Becker

pushed Ventresca out of the way and jumped into the cab of the truck behind the steering wheel. Finally, a maintenance worker from the building where Ventresca had been working ran over, pulled Becker out of the truck, and held him down until a City of Wilmington police officer arrived. The officer found Becker to be “incoherent” at the time of his arrest. He recovered \$2,785.00 from Becker, which was the exact amount stolen from the bank, but found no weapon. The officer then accompanied Becker to the bank, where the teller identified Becker as the robber.

(7) At trial, a latent fingerprint from Becker, which was found on the deposit slip that had been handed to the teller, was admitted into evidence. Also admitted into evidence were security photographs from Wilmington Trust, which showed Becker at the teller’s window during the course of the robbery. Becker testified at trial, stating that he went to the bank in order to rob it and that he was hearing voices at the time. He attempted to testify concerning his history of mental illness, but the State objected on the ground of relevance and the judge sustained the objection.

(8) Becker’s first claim is that he was improperly prevented from presenting his history of mental health problems at trial. The record reflects that, at the request of the Superior Court, Becker was evaluated by a psychologist to determine his competency to stand trial. In her written

report, the psychologist stated that Becker was not only competent to stand trial, but also was sane at the time he committed the charged offenses. The record further reflects that, on the day of trial, Becker, independent of his counsel, requested the Superior Court to change his plea to “not guilty by reason of insanity at the time of the crime.” After a colloquy with Becker’s counsel, who stated that there was no factual basis for such a plea, the judge denied Becker’s request. In light of the psychologist’s findings and defense counsel’s representation, we find no error or abuse of discretion on the part of the Superior Court in so ruling.³ We, therefore, conclude that Becker’s first claim is without merit.

(9) Becker’s second claim is that the charges brought against him were excessive, resulting in excessive sentences. The record reflects that Becker was charged with, and found guilty of, two counts of first-degree robbery and one count of first-degree attempted carjacking. A conviction of first-degree robbery requires the State to prove beyond a reasonable doubt that “. . . [in the course of committing theft], . . . the person . . . represents by word or conduct that the person is in possession or control of a deadly

³ To the extent that Becker attempts to attribute the judge’s ruling to ineffective assistance by his trial counsel, that attempt must fail. This Court will not entertain an ineffective assistance of counsel claim for the first time on direct appeal. *Wing v. State*, 690 A.2d 921, 923 (Del. 1996).

weapon”⁴ At trial, the evidence was that, in the course of stealing money from the bank, Becker gave the impression to the teller that he had a gun in his pocket and that, in the course of appropriating a truck to make a getaway, Becker told the driver that he had a gun and would kill him. As such, the evidence was sufficient to support Becker’s two first-degree robbery convictions.

(10) A conviction of first-degree attempted carjacking requires the State to prove beyond a reasonable doubt that “. . . the person knowingly and unlawfully [attempted to take] possession or control of a motor vehicle from another person . . . by coercion . . . and . . . represent[ed] by word or conduct that the person [was] in possession or control of a deadly weapon.”⁵ Moreover, the statute provides that it is not a violation of double jeopardy for a defendant to be charged with, and convicted of, both first-degree robbery and first-degree attempted carjacking.⁶ The evidence adduced at trial, thus, fully supports Becker’s conviction of the additional charge of first-degree attempted carjacking. In the absence of any evidence that the charges against Becker, or his sentences, were excessive, we conclude that his second claim also is without merit.

⁴ Del. Code Ann. tit. 11, §§ 831(a), 832(a) (2).

⁵ Del. Code Ann. tit. 11, § 836(a) (4); § 531 (“Attempt to commit a crime is an offense of the same grade and degree as the most serious offense which the accused is found guilty of attempting.”)

⁶ Del. Code Ann. tit. 11, § 836(f).

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