

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                                |
|--------------------|--------------------------------|
| EDWARD ADAMS,      | §                              |
|                    | § No. 199, 2007                |
| Defendant Below-   | §                              |
| Appellant,         | §                              |
| v.                 | § Court Below—Superior Court   |
|                    | § of the State of Delaware     |
|                    | § in and for New Castle County |
| STATE OF DELAWARE, | § Cr. ID No. 0605024607        |
|                    | §                              |
| Plaintiff Below-   | §                              |
| Appellee.          | §                              |

Submitted: October 15, 2007

Decided: December 10, 2007

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 10<sup>th</sup> day of December 2007, 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, Edward Adams, pleaded guilty to the charge of Criminally Negligent Homicide. The State dismissed the additional charges of Manslaughter and Reckless Endangering in the First Degree. Adams was sentenced to 5 years of Level V incarceration, to be suspended after 3 years for 2 years of decreasing levels of supervision. The Superior Court also imposed a number of conditions on Adams'

probationary sentence, including that Adams was forbidden from socializing with any women under 25 years of age. This is Adams' direct appeal.

(2) Adams' 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 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.<sup>1</sup>

(3) Adams' counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Adams' counsel informed Adams of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete transcript. Adams also was informed of his right to supplement his attorney's presentation. Adams responded with a brief that raises three issues for this Court's consideration. The State has responded to

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<sup>1</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).

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

(4) Adams raises three issues for this Court's consideration. He claims that his sentence was improper because it a) exceeded the sentencing guidelines as well as the prosecutor's recommendation; b) was based upon the Superior Court's misapprehension of the facts of the case; and c) imposed an unreasonable condition.

(5) The record reflects that the charges against Adams stemmed from an incident in the early morning hours of May 26, 2006. Adams, approximately 40 years old, was at a party attended by young people in their late teens and early twenties. Adams got into an argument and was asked to leave. He got into his pickup truck and backed up into the street, hitting and injuring several of the young women and killing 19 year-old Amber Burnett.

(6) At the time of his plea colloquy, Adams acknowledged that the Superior Court was not bound by the 15-month sentence within the TIS guidelines that was recommended by the State and that he could be sentenced to as much as the statutory maximum of 5 years. At the sentencing hearing, members of the victim's family spoke at length about the consequences of the victim's death. The Superior Court judge stated that he was departing from the TIS guidelines and the State's recommendation

due to the vulnerability of the victim and the severe impact on the victim's family. The Superior Court observed as follows: "The Court knows that Mr. Adams had no business being at that party, none whatsoever. Whatever trouble he got himself into because he was socializing with children, he has no one to blame but himself for that. And the Court has to deal now with the horrible after effects of all of this."

(7) While the Superior Court's sentence exceeded both the TIS guidelines as well as the State's recommendation, it did not exceed the statutory maximum.<sup>2</sup> Nor was there any evidence that the sentencing judge relied on impermissible factors or exhibited a closed mind.<sup>3</sup> As such, we find no error or abuse of discretion on the part of the Superior Court in sentencing Adams to a 5-year Level V term. We also conclude that the Superior Court did not misapprehend any issue of fact in sentencing Adams. The judge's comments concerning the circumstances of the victim's death, while harsh, were supported by the facts of record. Finally, we conclude that, given the particular circumstances of the victim's death, the Superior Court was within its discretion in imposing the conditions it did.

(8) This Court has reviewed the record carefully and has concluded that Adams' appeal is wholly without merit and devoid of any arguably

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<sup>2</sup> Del. Code Ann. tit. 11, §§ 631 and 4205(b) (5).

<sup>3</sup> *Fink v. State*, 817 A.2d 781, 790 (Del. 2003).

appealable issue. We also are satisfied that Adams' counsel has made a conscientious effort to examine the record and has properly determined that Adams 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/ Jack B. Jacobs  
Justice