IN THE SUPREME COURT OF THE STATE OF DELAWARE

SEAN WIGGINS,	§	
	§	No. 197, 2007
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0111014396
Plaintiff Below,	§	0307020866
Appellee.	§	

Submitted: September 20, 2007
Decided: December 17, 2007

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

O R D E R

This 17th day of December 2007, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c) ("Rule 26(c)"), his attorney's motion to withdraw, and the State's response, it appears to the Court that:

(1) In January 2002, the appellant, Sean Wiggins, pleaded guilty to Burglary in the Second Degree, Unlawful Imprisonment in the Second Degree and Assault in the Third Degree ("2002 burglary"). The Superior Court sentenced Wiggins to five years in prison suspended for home confinement and probation.[1]

[1] *State v. Wiggins*, Del. Super., Cr. ID No. 0111014396, Gebelein, J. (Jan. 17, 2002).

Thereafter, Wiggins was adjudged guilty of violating his probation and was resentenced to nine months in prison suspended for work release and probation.[2]

(2) In November 2003, Wiggins pleaded guilty to Aggravated Harassment ("2003 harassment"). The Superior Court sentenced Wiggins to two years in prison suspended for probation.[3]

(3) In December 2004, Wiggins was adjudged guilty of having violated the probation imposed in his 2002 burglary and 2003 harassment convictions (collectively "the two criminal cases").[4] For the 2003 harassment conviction, the Superior Court resentenced Wiggins to two years in prison suspended for probation. For the 2002 burglary conviction, the Superior Court resentenced Wiggins to two years and nine months in prison suspended after six months for probation.

(4) In December 2005 and again in March 2006, Wiggins was adjudged guilty of violating probation in the two criminal cases.[5] In 2005, the Superior Court resentenced Wiggins on the 2003 harassment conviction to two years in prison suspended for home confinement or work release followed by probation. For the 2002 burglary conviction, the Superior Court continued the sentence that

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[2] *State v. Wiggins*, Del. Super., Cr. ID No. 0111014396, Gebelein, J. (Aug. 18, 2003).
[3] *State v. Wiggins*, Del. Super., Cr. ID No. 0307020866, Slights, J. (Nov. 5, 2003).
[4] *State v. Wiggins*, Del. Super., Cr. ID Nos. 0111014396, 0307020866, Slights, J. (Dec. 17, 2004).
[5] *State v. Wiggins*, Del. Super., Cr. ID Nos. 0111014396, 0307020866, Slights, J. (Dec. 16, 2005); *State v. Wiggins*, Del. Super., Cr. ID Nos. 0111014396, 0307020866, Slights, J. (March 10, 2006).

was imposed pursuant to the December 2004 violation of probation. In 2006, the Superior Court resentenced Wiggins for the 2003 harassment conviction to one year and eleven months in prison suspended after thirty days for work release and probation. For the 2002 burglary conviction, the Superior Court again continued the sentence that was imposed pursuant to the December 2004 violation of probation.

(5) On March 22, 2007, Superior Court once again adjudged Wiggins guilty of having violated probation in the two criminal cases.[6] For the 2003 harassment conviction, the Superior Court resentenced Wiggins to one year in prison suspended after six months for work release. For the 2002 burglary conviction, the Superior Court resentenced Wiggins to eleven months in prison. This appeal followed.

(6) Wiggins' counsel on appeal (Counsel) has filed a brief and a motion to withdraw pursuant to Rule 26(c).[7] The Court's standard and scope of review of in a Rule 26(c) case is twofold. First, the Court must be satisfied that defense counsel made a conscientious examination of the record and the law for claims that could arguably support the appeal.[8] Second, the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at

[6] *State v. Wiggins*, Del. Super., Cr. ID Nos. 0111014396, 0307020866, Jurden, J. (March 22, 2007).
[7] Different counsel represented Wiggins in the violation of probation proceeding.
[8] *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 428, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

least arguably appealable issues that it can be decided without an adversary presentation.[9]

(7) Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. Counsel informed Wiggins of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the Rule 26(c) brief and appendix.[10] Counsel also informed Wiggins of his right to respond to the motion to withdraw and to supplement the Rule 26(c) brief. Wiggins submitted one issue for the Court's consideration. The State has responded to the position taken by Counsel as well as to the issue raised by Wiggins and has moved to affirm the Superior Court's judgment.

(8) Wiggins contends that the Superior Court violated double jeopardy when relying on the same violation, namely his admitted failure to report to his probation officer, to adjudge him guilty of violating probation in the two criminal cases.[11] Wiggins' claim is without merit. The double jeopardy clause is not implicated when the same violation results in the revocation of probation in unrelated criminal cases.[12]

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[9] *Id.*

[10] The appendix includes a copy of the hearing transcript.

[11] The hearing transcript reflects that Wiggins was charged with having violated several conditions of probation and that he admitted to failing to report to his probation officer for scheduled appointments. Hr'g Tr. at 3-6 (March 22, 2007).

[12] *See United States v. Dees*, 467 F.3d 847, 853-54 (3rd Cir. 2006) (holding that revocation of three terms of supervised release and subsequent imposition of three consecutive sentences based on same conduct did not violate double jeopardy where each revocation penalty was attributable

(9) The Court has reviewed the record carefully and has concluded that Wiggins' appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort to examine the record and properly determined that Wiggins 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

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to separate underlying conviction), *cert. denied*, 128 S. Ct. 52 (Oct. 1, 2007); *State v. Dorsey*, 1995 WL 862118 (Del. Super.) (quoting *United States v. Clark*, 984 F.2d 319, 320-21 (9th Cir. 1993) when holding that double jeopardy was not implicated when the same violation triggered revocation of both parole and probation imposed in unrelated criminal cases), *aff'd*, 1996 WL 265992 (Del. Supr.). *See also* Del. Code Ann. tit. 11, § 4333(h) (Supp. 2006) (providing that judge presiding over violation of probation is deemed to have jurisdiction to modify, revoke or terminate any probation being served by offender regardless of court or county in which sentence was originally imposed). *Cf.* Del Code Ann. tit. 11, § 206(a) (2001) (providing that same conduct of defendant may establish the commission of more than one offense).