

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VERNON J. HILL,	§
	§ No. 566, 2008
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. 0312013781
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 9, 2009
Decided: April 21, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 21st day of April 2009, 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) On October 16, 2008, the defendant-appellant, Vernon J. Hill, admitted to committing a violation of probation (“VOP”) in connection with his April 2004 sentence for Possession of a Controlled Substance Within 1000 Feet of a School and his September 2006 sentence for Possession with Intent to Deliver a Controlled Substance. On the first VOP, he was sentenced to six and a half years at Level V, to be suspended after sixty days after which he would be discharged as unimproved. On the second VOP, he

was sentenced to three years at Level V, to be suspended for two years at Level IV, in turn to be suspended after six months, with the balance of the sentence to be served at Level III probation. This is Hill's direct appeal.

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

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).

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

(4) The transcript of the October 16, 2008 VOP hearing reflects that, at the beginning of the hearing, the probation officer stated two grounds for the alleged probation violation---first, Hill was charged with robbery on September 28, 2008, and, second, on September 30, 2008, Hill admitted to his probation officer that he had used heroin the previous day. In addressing the Superior Court judge, Hill maintained his innocence regarding the robbery charge, but admitted that he had used a bag of heroin on September 29, 2008, because he was upset about his arrest. When Hill began to explain the events leading to the robbery charge, the Superior Court judge advised him not to address the issue. There was no further mention of the robbery charge during the remainder of the hearing.

(5) Hill raises several issues for this Court's consideration, which may fairly be characterized as follows: a) because the probation officer testified at the VOP hearing about the robbery charge in violation of the judge's admonition and because that charge was later dropped, his VOP sentence should be vacated; and b) his counsel made errors in connection with his Rule 26(c) brief.

(6) With respect to Hill's first claim, the record does not support his contention that the probation officer testified about his robbery charge in contravention of an admonition by the judge. When the probation officer mentioned the charge as one of the grounds for the VOP at the beginning of the hearing, the judge had issued no injunction against addressing the subject. The Superior Court judge later curtailed Hill's explanation of the events leading to the robbery charge in order to prevent any prejudice to Hill in any future proceedings on that charge.

(7) Moreover, it appears that the Superior Court did not even consider the robbery charge as a basis for the finding of a VOP, since Hill's admission that he had used heroin was sufficient, in and of itself, to revoke his probation. Even if the Superior Court had considered Hill's arrest for robbery, there would have been no error, since the Superior Court has the authority to revoke probation even where the defendant has been acquitted of criminal charges involving the same conduct that gave rise to the VOP.²

(8) Hill also claims that his counsel made errors in connection with his Rule 26(c) brief. Specifically, Hill contends that his counsel misstated his previous charges and erroneously stated that Hill did not provide any

² *Jones v. State*, Del. Supr., No. 223, 2001, Walsh, J. (Oct. 31, 2001) (citing *Gibbs v. State*, 760 A.2d 541, 544 (Del. 2000)).

points for the Court to consider. Our review of Hill's counsel's brief does not support those contentions. As such, we conclude that the claim is without merit.

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

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Randy J. Holland
Justice