IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL T. HOLLMAN,	§	
	§	No. 13, 2009
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for Sussex County
STATE OF DELAWARE,	§	Cr. ID No. 0801001551A
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: July 24, 2009
Decided: August 7, 2009

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

O R D E R

This 7th day of August 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) The defendant-appellant, Michael T. Hollman, was found guilty by a Superior Court jury of two counts of Kidnapping in the First Degree, Robbery in the First Degree, Aggravated Menacing, Possession of a Firearm During the Commission of a Felony, Reckless Driving, Failure to Signal, and Improper Passing on the Right.[1] Hollman was sentenced as a habitual

[1] Hollman's request to discharge his counsel was granted by the Superior Court prior to trial. Hollman represented himself at trial, with assistance from standby counsel.

offender on the robbery conviction to life in prison.[2] He also was sentenced to 25 years of Level V incarceration on each of the kidnapping convictions, to 25 years on the weapon conviction, and to 5 years on the aggravated menacing conviction, for a total of 80 years at Level V, to be suspended after 12 years for decreasing levels of supervision. Hollman received suspended fines on the remaining traffic convictions. This is Hollman's direct appeal.

(2) Hollman's trial 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 devoid of at least arguably appealable issues that it can be decided without an adversary presentation.[3]

(3) Hollman's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably

[2] Del. Code Ann. tit. 11, § 4214(b).
[3] *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).

appealable issues. By letter, Hollman's counsel informed Hollman 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. Hollman also was informed of his right to supplement his attorney's presentation. Hollman responded with a brief that raises three issues for this Court's consideration. The State has responded to the position taken by Hollman's counsel as well as the issues raised by Hollman and has moved to affirm the Superior Court's judgment.

(4) Hollman raises three issues for this Court's consideration. He claims that a) the prosecutor improperly revealed information to the jury about his prior felony convictions against the judge's order; b) the testimony of two prosecution witnesses was false; and c) the judge improperly failed to instruct the jury on the pertinent medical issues in the case and failed to consider those issues at sentencing.

(5) The trial transcript reflects the following. On February 8, 2008, at approximately 12:00 p.m., Hollman, a house painter by trade, entered Friedman's Jewelry Store near Route 13 in Georgetown, Delaware. He was wearing navy blue coveralls with paint splattered on them and was carrying a trash can with plastic bags and duct tape inside and a large-barreled gun with duct tape on the handle. (Although Hollman denied it, an employee

from a Wal-Mart store in Georgetown testified that he had observed a man wearing paint-spattered coveralls buying a trash can and duct tape at Wal-Mart that morning.) Hollman approached the jewelry store's two employees, assistant manager Elizabeth Smack and manager Marjorie DeMott, pointed the gun at them, and ordered them to lie on the floor. As Smack lay on the floor, Hollman forced DeMott to accompany him to the safe. When no money was found in the safe, Hollman ordered DeMott to open the cash register and take the cash out.

(6) Hollman then took the two employees to a back room and ordered DeMott to tape Smack's wrists and ankles together. Next, he ordered DeMott to open the jewelry cases at the front of the store and empty the contents into trash bags, striking her in the head with the gun when she wasn't moving fast enough. When the bags were full, Hollman located a large trash can and ordered DeMott to fill it with more jewelry. When DeMott was finished, Hollman took her to the back room and tied her up with duct tape. Hollman then left the store with approximately $395,000 worth of stolen jewelry. After Hollman left, Smack was able to get up and hobble over to an eating area where she used scissors to free herself from the duct tape. Smack cut DeMott free and called 911. Within minutes, the police arrived and Smack gave them a detailed description of the robber.

(7) On February 8, 2008, at approximately 12:30 p.m., Delaware State Police Detective Robert Truitt and another police officer were driving on Route 18 toward Bridgeville, Delaware, in an unmarked car. They were passed on the shoulder by a blue Chevy Malibu traveling at a high rate of speed. Truitt followed the vehicle for 25-30 minutes until police in marked cars took over the pursuit. The vehicle finally stopped on State Route 20, where Hollman was identified as the driver and taken into custody. At the time of his arrest, Hollman was wearing blue coveralls with paint spattered on them. Notified of Hollman's arrest and the possible connection with the jewelry store robbery, officers from the Georgetown Police Department arrived at the scene and began processing Hollman's vehicle. They found a .45 caliber semi-automatic handgun with duct tape around the handle under the driver's seat and a large trash can containing jewelry in the back seat. They also found a small bag containing $363.00. Hollman was then taken back to the jewelry store for a show-up identification. Smack and DeMott both identified him as the robber.

(8) At trial, Hollman admitted to robbing the jewelry store in his opening statement. He apologized to Smack and DeMott during their testimony. During Hollman's testimony, he told the jury that he had been an "insulin diabetic" for more than seven years. He stated that he was on his

way to work the day of the robbery when an insulin reaction occurred. He stated that he ended up at the shopping center where the jewelry store was located intending to get help. Finally, Hollman stated that he did not remember going into the jewelry store.

(9) Hollman's first claim is that the prosecutor improperly revealed information to the jury about his prior felony convictions against the judge's order. The record reflects that, in accordance with the judge's ruling, the prosecutor was to ask Hollman on cross examination regarding his three prior felony convictions for crimes of *dishonesty*. However, the prosecutor mistakenly asked Hollman about his prior convictions for crimes of *violence*. An objection was made and the judge immediately gave a curative instruction to the jury. Under the circumstances presented here, the Superior Court properly cured any harm occasioned by the prosecutor's unintentional misstatement.[4] As such, we conclude that Hollman's first claim is without merit.

(10) Hollman's second claim is that two prosecution witnesses, specifically the two jewelry store employees, gave false testimony. The jury, as the fact finder, has sole responsibility for determining the credibility

[4] *Bruce v. State*, 781 A.2d 544, 556 (Del. 2001) (a curative instruction is usually sufficient to remedy any prejudice resulting from an improper statement by the prosecutor); *Garvey v. State*, 873 A.2d 291, 300 (Del. 2005) (a prompt curative instruction will usually preclude a finding of reversible error).

of witnesses, for resolving conflicts in the testimony, and for drawing any inferences from proven facts.[5] The record in this case, including the trial transcript, reveals no basis upon which to question the credibility determinations of the jury. As such, we conclude that Hollman's second claim is without merit.

(11) Hollman's third claim is that the judge failed to instruct the jury on the pertinent medical issues and failed to consider those issues at sentencing. The record reflects that, at the prayer conference, Hollman requested that the judge give instructions to the jury that criminal liability must be based on voluntary acts or omissions. The record further reflects that the judge gave the instructions requested by Hollman and that Hollman neither requested more specific instructions nor voiced any objection to the instructions given by the judge. Moreover, the record contains no evidence that the jury was not instructed wholly in accordance with Delaware law.[6] As for Hollman's sentencing, once the Superior Court had declared him to be a habitual offender, it was required by statute to impose a life sentence.[7] For all of the above reasons, we conclude that Hollman's third claim also is without merit.

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[5] *Newman v. State*, 942 A.2d 588, 595 (Del. 2008).
[6] *Flamer v. State*, 490 A.2d 104, 128 (Del. 1983).
[7] Del. Code Ann. tit. 11, §4214(b); *Hembree v. State*, Del. Supr., No. 95, 1996, Veasey, C.J. (Jan. 7, 1997).

(12) This Court has reviewed the record carefully and has concluded that Hollman's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Hollman's counsel has made a conscientious effort to examine the record and has properly determined that Hollman 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/ Myron T. Steele
Chief Justice