

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID WILLIAMS,	§
	§
Defendant Below-	§ No. 147, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0805027568
Plaintiff Below-	§
Appellee.	§

Submitted: July 31, 2009
Decided: September 16, 2009

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

ORDER

This 16th day of September 2009, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, David Williams (Williams), was found guilty following a stipulated bench trial of one count of distribution of heroin within 300 feet of a park. Upon the State's motion, the Superior Court declared Williams to be a habitual offender and sentenced him to ten years at Level V incarceration. This is Williams' direct appeal.

(2) Williams' counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Williams' counsel asserts that, based upon

a complete and careful examination of the record, there are no arguably appealable issues. By letter, Williams' attorney informed him of the provisions of Rule 26(c) and provided Williams with a copy of the motion to withdraw and the accompanying brief. Williams also was informed of his right to supplement his attorney's presentation. Williams has enumerated two issues for the Court's consideration. The State has responded to Williams' points, as well as to the position taken by Williams' counsel, and has moved to affirm the Superior Court's judgment.

(3) 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) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this 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

(4) Williams raises two related issues. He contends that: (i) police officers had no reasonable suspicion to stop him; and (ii) the officers' patdown search was unjustified. Williams raised these issues below when

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).

his counsel filed a pretrial motion to suppress the heroin that officers found on and near him. The Superior Court denied Williams' motion.

(5) While we defer to the Superior Court's factual findings, we review *de novo* the Superior Court's legal conclusion that the police had reasonable suspicion to stop Williams.² A police stop is justified only if there are specific and articulable facts, together with rational inferences, to suggest that a suspect is committing, has committed, or is about to commit a crime.³ In determining whether reasonable suspicion existed to justify a detention, courts will defer to the experience and training of law enforcement officers.⁴

(6) In this case, officers testified at the suppression hearing that they were conducting surveillance in a high crime area. Officers observed Williams walking on the street with another man, whom the officers knew to be a drug dealer. The men separated, and Williams reversed his direction while his companion went onto the porch of a residence. His companion then motioned Williams to come over. Williams stayed on the porch for a few seconds and then walked back in the direction from which he had come

² *State v. Rollins*, 922 A.2d 379, 382-83 (Del. 2007).

³ *Woody v. State*, 765 A.2d 1257, 1262 (Del. 2001) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)).

⁴ *Id.*

and approached a gray Mercedes. Williams leaned into the driver's side of the vehicle and officers observed him engage in a hand-to-hand transaction. As officers approached, Williams quickly walked away and the Mercedes drove off. As they got closer, Williams began walking backwards with his hands hidden behind his back. Fearing for their safety, officers handcuffed Williams. When asked if he had any weapons or drugs, Williams told officers that he had empty heroin bags in his rear pocket. Officers retrieved the empty baggies and then noticed a bundle at Williams' feet, which contained 29 individual bags of heroin.

(7) In denying Williams' motion to suppress, the Superior Court found that the totality of the circumstances gave rise to reasonable suspicion for the police officers to stop Williams. Specifically, the trial court noted that the police observed Williams in a high crime area with a known criminal. He stopped twice in a short period for brief transactions. He engaged in a hand-to-hand transaction with a car on the street. He and the car both retreated quickly upon seeing the officers. Williams also behaved suspiciously by walking backwards and hiding his hands behind his back, out of the officers' view, as they approached him.

(8) We find no abuse of discretion or legal error in the Superior Court's denial of Williams' motion to suppress. The totality of the

circumstances supports a finding that the officers had reasonable and articulable suspicion to stop Williams.⁵ Because the officers had reasonable suspicion to stop and because Williams was hiding his hands, the officers were permitted to conduct a patdown search for their own safety to ensure that Williams had no weapons.⁶

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

⁵ *State v. Rollins*, 922 A.2d at 386.

⁶ *Woody v. State*, 765 A.2d at 1266 (citing *Minnesota v. Dickerson*, 508 U.S. 366 (1993)).