

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TIMOTHY CARTER,	§	
	§	No. 134, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0808029143
Appellee.	§	

Submitted: July 29, 2010  
Decided: October 1, 2010

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

**ORDER**

This 1<sup>st</sup> day of October 2010, upon consideration of the appellant’s brief pursuant to Supreme Court Rule 26(c), his attorney’s motion to withdraw, and the State’s response, it appears to the Court that:

(1) The appellant, Timothy Carter, was charged by indictment with two counts of Murder in the First Degree (one intentional, the other felony murder), Possession of a Firearm During the Commission of a Felony (“PFDCF”), Possession of a Firearm by a Person Prohibited, Attempted Robbery in the First Degree, and Conspiracy in the First Degree. The charges arose from what the State aptly describes as “a botched robbery” by

Carter and three co-defendants in which the victim was killed by a gunshot to the left eye.

(2) On November 30, 2009, Carter pled guilty to one count of Murder in the Second Degree and PFDCF. After a presentence investigation, Carter was sentenced to a total of thirty-seven years at Level V followed by probation. This appeal followed.

(3) On appeal, Carter's defense counsel ("Counsel") has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)"). Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Prior to the filing of the brief, Counsel, as required, informed Carter of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief. Counsel also informed Carter of his right to supplement the brief and to respond to the motion to withdraw. Carter responded with a written submission for this Court's consideration. The State has responded to the points raised in Carter's submission as well as to the position taken by Counsel and has moved to affirm the Superior Court's judgment.

(4) 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.<sup>1</sup> First, the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims.<sup>2</sup> Second, 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>3</sup>

(5) Carter’s written submission raises issues concerning his sentence. First, Carter asks the Court “to take another look at the facts of this case” and impose a sentence “that is not excessive.” According to Carter, “the facts of [the] case make it a minimum mandatory case.” Second, Carter contends that he was sentenced based “solely” on his juvenile record. Third, Carter contends that the sentencing judge misinterpreted the medical examiner’s report.

(6) “Delaware law is well-established that appellate review of sentences is extremely limited.”<sup>4</sup> In Delaware, “[a]ppellate review of a sentence generally ends upon determination that the sentence is within the statutory limits prescribed by the legislature.”<sup>5</sup> “[I]n reviewing a sentence

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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).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

<sup>5</sup> *Id.* (quoting *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989)).

within statutory limits, this Court will not find error of law or abuse of discretion unless it is clear from the record below that a sentence has been imposed on the basis of demonstrably false information or information lacking a minimum indicium of reliability.”<sup>6</sup>

(7) The sentence imposed in Carter’s case was within the statutory limits. The statutory range of incarceration for Murder in the Second Degree is fifteen years minimum mandatory up to life imprisonment.<sup>7</sup> Carter was sentenced to thirty-three years suspended after thirty years for probation. The statutory range of incarceration for PFDCF is three years minimum mandatory up to twenty-five years.<sup>8</sup> Also, any sentence imposed for PFDCF is mandatory, *i.e.*, it must be served without suspension, good time or probation.<sup>9</sup> Carter was sentenced to seven years.

(8) There is no indication in the record that the Superior Court imposed Carter’s sentence “on the basis of demonstrably false information or information lacking a minimum indicium of reliability.”<sup>10</sup> Rather, the transcript of the sentencing reflects that the Superior Court imposed sentence after appropriately considering the presentence report, the medical

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<sup>6</sup> *Mayes*, 604 A.2d at 843.

<sup>7</sup> Del. Code Ann. tit. 11, §§ 635, 4205(b)(1).

<sup>8</sup> Del. Code Ann. tit. 11, § 1447A.

<sup>9</sup> *Id.*

<sup>10</sup> *Mayes*, 604 A.2d at 843.

examiner's report, Carter's participation in the underlying crimes, and his prior violent conduct, *i.e.*, two prior robbery convictions/adjudications.<sup>11</sup>

(9) The Court has reviewed the record carefully and has concluded that Carter's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Carter's counsel made a conscientious effort to examine the record and properly determined that Carter 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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<sup>11</sup> See *Massey v. State*, 256 A.2d 271 (Del. 1969) (holding that Superior Court may properly consider defendant's juvenile record when sentencing him as an adult in a robbery case). See SENTAC (Delaware Sentencing Accountability Commission) Benchbook Statement of Policy No. 14 at 23 (2010) (defining aggravating factor repetitive criminal history as conviction or adjudication for the same or similar offense on two or more previous occasions); SENTAC Benchbook Statement of Policy No. 3 at 22 (providing that offenses adjudicated at age 14 or older shall be counted in prior history).