

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|--------------------------------|
| JIMMIE LEWIS, | § |
| | § No. 203, 2010 |
| 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. 0305016966 |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: September 14, 2010

Decided: October 13, 2010

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

ORDER

This 13th day of October 2010, 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, Jimmie Lewis, was found to have committed a violation of probation (“VOP”) in connection with his 2003 sentences for Felony Theft and Resisting Arrest.¹ Lewis was sentenced on the VOP to a total of 90 days at Level V incarceration, to be suspended for

¹ This Court affirmed Lewis’s convictions on direct appeal. *Lewis v. State*, Del. Supr., No. 64, 2005, Berger, J. (Sept. 29, 2005).

90 days at Level IV VOP Center. This is Lewis's direct appeal from his VOP sentences.

(2) The record before us reflects that Lewis appeared at a VOP hearing before the Superior Court on April 6, 2010. He admitted to failing to report to his probation officer and to absconding while on probation. The record also reflects that Lewis had an additional 2 years at Level V remaining on his original sentences.

(3) Lewis'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 defense 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 to determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.²

(4) Lewis's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Lewis's counsel informed Lewis of the provisions of Rule

² *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).

26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete hearing transcript. Lewis also was informed of his right to supplement his attorney's presentation. Lewis has chosen not to supplement his attorney's presentation.³ The State has responded to the position taken by Lewis's counsel and has moved to affirm the Superior Court's judgment.

(5) This Court has reviewed the record carefully and has concluded that Lewis's appeal is wholly without merit and devoid of any arguably appealable issues. We also are satisfied that Lewis's counsel has made a conscientious effort to examine the record and the law and has properly determined that Lewis could not raise a meritorious claim in this appeal.⁴

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/ Jack B. Jacobs
Justice

³ On April 21, 2010, prior to briefing in this appeal, Lewis filed a "brief of appeal" in which he argued that he should be given credit for Level V time spent in Ohio while awaiting extradition to Delaware.

⁴ Even if we considered Lewis's April 21, 2010 submission as a supplement to his attorney's presentation, the argument made therein is now moot because the record reflects that Lewis was released from custody in June 2010 and is no longer on probation.