

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN RILEY,	§
	§ No. 220, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0903024333
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 1, 2010
Decided: November 22, 2010

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

ORDER

This 22nd day of November 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 thereto, it appears to the Court that:

(1) The defendant-appellant, Kevin Riley, pleaded guilty to Robbery in the First Degree and Possession of a Firearm During the Commission of a Felony. On the robbery conviction, he was sentenced to 20 years of Level V incarceration, to be suspended after 15 years for 6 months at Level IV Work Release and 18 months at Level III probation. On the weapon conviction, he was sentenced to 5 years of Level V incarceration. This is Riley's direct appeal.

(2) Riley'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 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) Riley'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, Riley's counsel informed Riley 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. Riley also was informed of his right to supplement his attorney's presentation. Riley responded with a brief that raises 7 issues for this Court's consideration. The State has responded to the position taken by Riley's counsel as well as the issues raised by Riley and has moved to affirm the Superior Court's judgment.

(4) Riley raises 7 issues for this Court's consideration, which may fairly be characterized as follows: a) his guilty plea was involuntary because of the

¹ *Penon 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).

medications he was taking; b) his sentences are excessive and involve more Level V time than he agreed to serve as part of his guilty plea; and c) his attorney provided ineffective assistance in connection with his guilty plea.

(5) The transcript of Riley's guilty plea colloquy reflects that Riley told the Superior Court judge that he had read and understood the plea agreement and the guilty plea form. He stated that he understood the charges to which he was pleading guilty and that he had been afforded sufficient time to discuss the charges and the consequences of pleading guilty with his counsel. Riley acknowledged that he could be sentenced to as little as 5 years and as much as 25 years on the robbery charge and to as little as 3 years and as much as 25 years on the weapon charge. He also acknowledged that any sentencing recommendation by the State was not binding upon the Superior Court. Riley, finally, acknowledged that he was pleading guilty because he had committed the offenses.

(6) During the plea colloquy, with the assistance of counsel, Riley told the judge that he was taking several medications for depression and other psychological problems that had been diagnosed in the 1970's. He told the judge that his medications assisted him in understanding the proceedings. Riley told the judge that he wanted to plead guilty but mentally ill. The judge advised him that a plea of guilty but mentally ill was not supported by the record before the court at that time, but that a mental health evaluation would be ordered. At the time of the

sentencing hearing, the Superior Court stated that Riley's mental health evaluation did not support a diagnosis of mental illness and, therefore, could not be used to support a plea of guilty but mentally ill and, moreover, could not be used in mitigation in imposing sentence.

(7) Riley's first claim is that his guilty plea was involuntary because of the medications he was taking. The transcript of the guilty plea does not support this claim. While it is undisputed that Riley had been taking medications for mental health issues since the 1970's, there is no evidence that the medications rendered his plea involuntary. To the contrary, as acknowledged by Riley, his medications enabled him to understand the charges to which he was pleading guilty and the consequences of those pleas. The Superior Court's colloquy with Riley before accepting his guilty pleas was thorough and lengthy and the Superior Court's questions concerning Riley's history of mental health issues and medications were extensive and probing. We conclude that Riley's plea was knowing and voluntary and that, in the absence of clear and convincing evidence to the contrary, he is bound by the statements he made during his plea colloquy.² Therefore, there is no merit to Riley's first claim.

(8) Riley's second claim is that his sentences are excessive and involve more Level V time than he agreed to serve as part of his plea agreement. The

² *Somerville v. State*, 703 A.2d 629, 631-32 (Del. 1997).

transcript of Riley's plea colloquy reflects clearly that Riley understood he could be sentenced to as little as 5 years and as much as 25 years on the robbery charge and to as little as 3 years and as much as 25 years on the weapon charge. Moreover, each of Riley's sentences was within the statutorily-authorized range of punishment.³ Finally, Riley's sentences, involving a total of 20 years of non-suspended prison time, mirrors the 20-year sentence contained in Riley's plea agreement. As such, there was no error or abuse of discretion on the part of the Superior Court in sentencing Riley. Therefore, there is no merit to Riley's second claim.

(9) Riley's third claim is that his attorney provided ineffective assistance in connection with his guilty plea. Riley's ineffectiveness claim was not presented to the Superior Court in the first instance. Because this Court does not review ineffectiveness claims for the first time on direct appeal, we decline to address Riley's third claim.⁴

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

³ Del. Code Ann. tit. 11, §§ 832(b)(2), 1447A(c), and 4205(b)(2).

⁴ *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986).

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/ Henry duPont Ridgely
Justice