

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DALE O. PALMER,	§	
	§	No. 44, 2003
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County in Cr. A.
	§	No. VS93-02-0432 and Cr. A.
STATE OF DELAWARE,	§	Nos. VS01-05-0267, VS01-06-
	§	0114.
Plaintiff Below,	§	
Appellee.	§	Def. ID Nos. 93S00805DI
	§	0104016725

Submitted: May 28, 2003  
Decided: September 12, 2003

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

**ORDER**

This 12<sup>th</sup> day of September 2003, 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) On June 20, 2002, Dale Palmer was charged with having violated his probation.<sup>1</sup> By order dated June 21, 2002, the Superior Court appointed the Public Defender to represent Palmer at a violation of probation (VOP) hearing that was scheduled later that month. After the hearing on June 27, 2002, Palmer

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<sup>1</sup>Palmer was on probation from a 1993 conviction, *State v. Palmer*, Def. ID No. 93S00805DI, and a 2001 conviction, *State v. Palmer*, Def. ID No. 0104016725.

was adjudged guilty of VOP and was sentenced to three years and six months at Level V, suspended for six months at Level IV supervision, followed by one year and ten months at Level II supervision.

(2) On December 17, 2002, Palmer filed a motion for postconviction relief in which he complained that he had *not* been represented by counsel at the June 2002 VOP hearing, as the Superior Court had directed. By order dated December 31, 2002, the Superior Court acknowledged its oversight in proceeding with the June 2002 VOP hearing without Palmer's counsel present and granted Palmer's postconviction motion. The Superior Court vacated the June 2002 sentence and further ordered that the Public Defender should meet with Palmer prior to a newly scheduled VOP hearing.

(3) Palmer was represented by counsel at the new VOP hearing that took place on January 16, 2003. At the hearing, Palmer admitted that he had violated probation by absconding to Georgia; however, through counsel, he offered an explanation in mitigation of his actions and requested leniency in sentencing. At the conclusion of the hearing, the Superior Court once again adjudged Palmer guilty of VOP and sentenced him to two years and ten months at Level V, suspended for five months at Level IV, followed by one year and

ten months at Level II. This is Palmer's appeal from the January 2003 VOP conviction.

(4) Palmer'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. First, 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. 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>2</sup>

(5) Palmer's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Palmer's counsel informed Palmer 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. Palmer was also informed of his right to supplement his attorney's presentation. Palmer responded with a brief that raises two issues

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<sup>2</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).

for this Court's consideration. The State has responded to the position taken by Palmer's counsel as well as to the issues raised by Palmer and has moved to affirm the Superior Court's judgment.

(6) On appeal, Palmer claims that he was denied the effective assistance of counsel at the January 2003 VOP hearing. Palmer also claims that the Superior Court's December 2002 order, that granted his motion for postconviction relief, failed to rule upon other issues that Palmer had presented in the motion.

(7) This Court will not consider an ineffective assistance of counsel claim that is raised for the first time on appeal.<sup>3</sup> In this case, Palmer did not raise a claim of ineffective assistance of counsel in the 2003 VOP proceeding in the Superior Court. Accordingly, we will not consider that claim in this appeal. Conversely, all of Palmer's 2002 postconviction claims were addressed appropriately when the Superior Court granted Palmer's postconviction motion, vacated the 2002 sentence, and scheduled the 2003 VOP hearing at which Palmer was represented by counsel. Palmer's claim to the contrary is without merit.

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<sup>3</sup>*Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

(8) The Court has reviewed the record carefully and has concluded that Palmer's appeal is wholly without merit and devoid of any arguably appealable issue. We are also satisfied that Palmer's counsel has made a conscientious effort to examine the record and has properly determined that Palmer 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/ E. Norman Veasey  
Chief Justice