

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VINCENT HICKS,	§
	§ No. 741, 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. 0812020875
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 31, 2011
Decided: July 21, 2011

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

ORDER

This 21st day of July 2011, 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, Vincent Hicks, was found guilty by a Superior Court jury of Aggravated Menacing, Possession of a Firearm During the Commission of a Felony, Possession of a Deadly Weapon by a Person Prohibited, Assault in the Second Degree and two counts of Conspiracy in the Second Degree. Hicks was sentenced on the aggravated menacing conviction to 5 years at Level V incarceration, to be suspended for 2 years at Level III probation. On each of the weapon convictions, he was

sentenced to 5 years at Level V. On the assault conviction, he was sentenced to 8 years at Level V, to be suspended after 1 year for 7 years at Level IV Work Release, in turn to be suspended after 6 months for 2 years at Level III probation. Finally, on each of the conspiracy convictions, Hicks was sentenced to 2 years at Level V, to be suspended for 1 year at Level III probation. This is Hicks's direct appeal.

(2) Hicks's trial 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) Hicks'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, Hicks's counsel informed Hicks of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the

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).

accompanying brief and the complete trial transcript. Hicks also was informed of his right to supplement his attorney's presentation. Hicks responded with a brief that raises several issues for this Court's consideration. The State has responded to the position taken by Hicks's counsel as well as the issues raised by Hicks and has moved to affirm the Superior Court's judgment.

(4) Hicks raises several issues for this Court's consideration, which may fairly be summarized as follows. He claims that a) his right to a speedy trial was violated; b) his indictment was improperly amended during trial; c) his constitutional rights under the Fourth and Fifth Amendments were violated; and d) his counsel provided ineffective assistance.

(5) The evidence presented at trial established the following. On December 17, 2008, in the City of Wilmington, the victim, a 19 year-old pregnant woman, was offered a ride by another young woman whom she believed was her friend. After picking up two young men, including Hicks, the group drove to Newark, Delaware, to a house where several other individuals were waiting. There, the victim was held captive, assaulted and terrorized by members of the group, three men and three women, all of whom belonged to various gangs. While the victim herself was not a member of a gang, she had become friendly with some gang members and

was attacked for allegedly causing friction between Hicks and another gang leader.

(6) The victim was slapped, punched, burned with cigarettes and had the barrel of a handgun stuck down her throat. The victim testified that Hicks told another gang member to watch her when he left the room, asked her questions and ordered the others to punch or kick her if she failed to answer correctly, and himself punched her in the face and put the gun down her throat. Eventually, the victim was driven back to Wilmington and released. The victim telephoned the police and was taken to Christiana Hospital for treatment of her injuries. Because the victim knew her attackers personally, they all were identified and arrested. At trial, the victim testified about the attack. In addition, several of Hicks's co-defendants testified and confirmed the victim's account in all relevant respects.

(7) Hicks's first claim on appeal is that his right to a speedy trial was violated. In order to determine whether a defendant's speedy trial rights were violated, a court assesses four factors: a) the length of the delay; b) the reason for the delay; c) the defendant's assertion of the right; and d) prejudice to the defendant.² Unless the delay is lengthy enough to be

² *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

presumptively prejudicial, there is no need to inquire into the remaining factors.³

(8) In this case, Hicks was arrested on the relevant charges on February 12, 2009, at the Howard B. Young Correctional Facility, where he was being held on a violation of probation warrant. Hicks went to trial on February 24, 2010, approximately one year later. The record reflects that trial was set to begin on September 22, 2009. However, Hicks's appointed counsel moved for a continuance of the trial date due to a conflict. The Superior Court granted the motion, appointed new counsel and set a new trial date for November 3, 2009. Because the prosecutor was scheduled for a murder trial on that date, however, another trial date was set for December. Trial ultimately took place in February. Both continuances were requested and granted for good cause. We do not find a delay of one year under the circumstances presented here to be presumptively prejudicial.⁴

(9) As for the other speedy trial factors, the record does not reflect that Hicks, either *pro se* or through counsel, ever asserted his right to a speedy trial in the Superior Court. Nor does Hicks identify any prejudice suffered by him as the result of any alleged violation of his right to a speedy

³ *Middlebrook v. State*, 802 A.2d 268, 273-74 (Del. 2002).

⁴ *Id.*

trial. Weighing all of the above, we find Hicks's claim of a speedy trial violation to be without merit.

(10) Hicks's claims of an improperly amended indictment and violations of his Fourth and Fifth Amendment rights are asserted without any record support. Nor does our review of the record in this case reveal a factual basis for any such claims. As such, we conclude that they, too, are without merit.

(11) Hicks's final claim is that his attorney provided ineffective assistance. The record reflects that the attorney who represented Hicks at trial unsuccessfully sought to withdraw from the case prior to trial due to Hicks's non-cooperation. However, there is no indication that the Superior Court ever fully considered and adjudicated any complaints of ineffective assistance. In the absence of a fully-developed record below, we decline to consider Hicks's claims of ineffective assistance for the first time in his direct appeal.⁵

(12) This Court has reviewed the record carefully and has concluded that Hicks's appeal is wholly without merit and devoid of any arguable appealable issue. We also are satisfied that Hicks's counsel has made a

⁵ *Duross v. State*, 494 A.2d 1265, 1267 (Del. 1985).

conscientious effort to examine the record and the law and has properly determined that Hicks 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