

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROCCO ZECCA,	§
	§
Defendant Below-	§ No. 140, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. VN97-10-1752-01
Plaintiff Below-	§
Appellee.	§

Submitted: July 3, 2002
Decided: August 9, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices

ORDER

This 9th day of August 2002, 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 September 11, 2001, the defendant-appellant, Rocco Zecca, was found to be in violation of probation (“VOP”). The Superior Court revoked his probation and reimposed a sentence of 3 years incarceration at Level V,¹ with credit for 1 year previously served, to be followed by 6 months at Level III probation. Zecca did not appeal the finding of a VOP or his sentence, but did file

¹This was a minimum mandatory sentence for a drug trafficking conviction. DEL. CODE ANN. tit 16, § 4753A (1995).

several motions for sentence modification and a petition for a writ of habeas corpus, all of which were denied by the Superior Court. The Superior Court's March 4, 2002 denial of Zecca's motion for sentence modification is the subject of the instant appeal.

(2) Zecca'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.²

(3) Zecca's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Zecca's counsel informed Zecca of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete hearing transcript. Zecca was also informed of his right to supplement his attorney's presentation. Zecca responded with a brief that raises one issue for this Court's consideration. The State has responded to the position taken by Zecca's

counsel as well as the issue raised by Zecca and has moved to affirm the Superior Court's judgment.

(4) Zecca raises one issue for this Court's consideration. He claims that the Superior Court should have credited him with an additional 6 months of Level V time on his VOP sentence based upon the time he spent in boot camp.

(5) The transcript of the VOP hearing reflects that Zecca was sentenced originally on December 22, 1998 pursuant to the statute governing the first offender boot camp diversion program.³ He successfully completed the 6-month boot camp program, but committed a number of new violations while in boot camp aftercare. At the VOP hearing, the Superior Court explained to Zecca that he was entitled to credit for the approximately year-long period he waited to enter the boot camp program, but was not entitled to credit for the 6 months he actually spent in boot camp.

(6) Zecca's claim that he is entitled to an additional 6 months credit for the time he spent at boot camp is without merit. Pursuant to the boot camp diversion program statute, the Superior Court is mandated to reimpose the defendant's entire deferred sentence upon a finding of a VOP.⁴ Moreover, the

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).

³DEL. CODE ANN. tit 11, § 6712(d) (1)-(5).

⁴ID.

statute clearly states that “[n]o credit time shall be given for any time spent in boot camp, Level IV or Level III” and, furthermore, that any sentence in violation of this provision will constitute an illegal sentence.⁵

(7) This Court has reviewed the record carefully and has concluded that Zecca’s appeal is wholly without merit and devoid of any arguably appealable issue. We are also satisfied that Zecca’s counsel has made a conscientious effort to examine the record and has properly determined that Zecca 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:

Myron T. Steele
Justice

⁵DEL. CODE ANN. tit 11, § 6710(c), which permits a credit for time spent at boot camp, does not apply to a sentence such as Zecca’s, which was deferred pursuant to the boot camp diversion program. *Whitner v. State*, 762 A.2d 18, 19 (Del. 2000).