

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID WATSON,	§	
	§	No. 202, 2013
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in
v.	§	and for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0603014298
Plaintiff Below,	§	0603017504
Appellee.	§	

Submitted: September 3, 2013

Decided: November 6, 2013

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

O R D E R

This 6th day of November 2013, 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, it appears to the Court that:

(1) In 2006, the appellant, David Watson, pled guilty to Robbery in the First Degree and other offenses (hereinafter “the robbery case”) and was sentenced to a total of twenty-one years at Level V suspended after six years for eight years of probation. On September 27, 2012, Watson was found to have violated his probation (“VOP”) in the robbery case and was sentenced, on December 19, 2012, to fifteen years at Level V suspended for eight years of probation.

(2) In January 2013, the Delaware State Police arrested Watson for his alleged participation in shootings at the home of various law enforcement officers in Delaware and Maryland. Watson was indicted on January 7, 2013, on multiple counts of Reckless Endangering in the First Degree and other offenses (“the reckless endangering case”).¹

(3) As a result of the new charges in the reckless endangering case, and for allegedly missing an appointment with his probation officer, submitting a positive drug screen for marijuana, and for possessing firearms, Watson was again charged with VOP in the robbery case (“the second VOP”). After a hearing on March 7, 2013, Watson was found guilty of the second VOP and was sentenced, on March 21, 2013, to fifteen years at Level V, with credit for time served, followed by six months at Level III probation. This appeal followed.

(4) On appeal, Watson’s defense counsel (“Counsel”) has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c).² Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Counsel informed Watson of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the hearing transcript. Watson also was informed of his right to

¹ *State v. Watson*, Del. Super., Cr. ID No. 1301001320A.

² *See* Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).

supplement Counsel's presentation. Watson responded with a writing that submits two issues for this Court's consideration. The State has responded to the position taken by Counsel as well as the issues raised by Watson and has moved to affirm the Superior Court's judgment.

(5) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims.³ The Court must also 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.⁴

(6) On appeal, Watson contends that Counsel had a conflict of interest in representing Watson in the second VOP proceeding because Counsel was aware that Watson had initiated a federal action against him. Watson's claim is without merit. Watson's filing of a complaint against Counsel did not, in and of itself, create a prejudicial conflict of interest.⁵

(7) Also, Watson contends that Counsel rendered ineffective assistance at the second VOP proceeding. This claim is unavailing. It is settled Delaware law

³ *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).

⁴ *Id.*

⁵ See *Woods v. State*, 1996 WL 666009, *2 (Del. Nov. 12, 1996) (noting that "the mere filing of a complaint against his attorney would not, without more, require Woods' trial counsel to withdraw his representation").

that this Court will not consider allegations of ineffective assistance of counsel made for the first time on direct appeal.⁶ Because Watson's ineffective assistance of counsel claim was not presented to the Superior Court in the first instance, we decline to address such a claim in this appeal.

(8) Upon careful review of the record, the Court has concluded that Watson's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Watson could not raise a meritorious claim on 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/ Henry duPont Ridgely
Justice

⁶ *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).