

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK T. FERGUSON,	§
	§
Defendant Below-	§ No. 503, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN99-09-0063-0064
Plaintiff Below-	§ IN99-09-0862
Appellee.	§ IN99-09-0072

Submitted: June 4, 2001  
Decided: July 18, 2001

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

**ORDER**

This 18<sup>th</sup> day of July 2001, 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) In November 1999, the defendant-appellant, Mark T. Ferguson, was charged with two counts of theft, three counts of conspiracy in the second degree, two counts of robbery in the first degree, one count of possession of a deadly weapon during the commission of felony, and two counts of kidnaping in the first degree. Ferguson pleaded guilty to two counts of theft and two counts of conspiracy in the second degree. On each of the theft

convictions, he was sentenced to 2 years imprisonment at Level V, with the second sentence to be suspended after 1 year for 1 year at Level IV. On each of the conspiracy convictions, Ferguson was sentenced to 2 years imprisonment at Level V, with the second sentence to be suspended for 6 months at Level III. This is Ferguson's direct appeal.

(2) Ferguson'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.<sup>1</sup>

(3) Ferguson's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Ferguson's counsel informed Ferguson of the provisions of Rule

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<sup>1</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).

26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Ferguson was also informed of his right to supplement his attorney's presentation. Ferguson responded with a brief that raises three issues for this Court's consideration. The State has responded to the position taken by Ferguson's counsel as well as the issues raised by Ferguson and has moved to affirm the Superior Court's judgment.

(4) Ferguson raises three issues for this Court's consideration. He claims: a) his attorney provided ineffective assistance; b) he improperly pleaded guilty to two counts of conspiracy; and c) he received an unfair sentence.

(5) This Court will not consider on direct appeal any claim of ineffective assistance of counsel that was not raised below.<sup>2</sup> Accordingly, we will not consider Ferguson's claims of ineffective assistance for the first time in this direct appeal.

(6) Ferguson's second claim that he improperly pleaded guilty to two counts of conspiracy is unavailing. We have reviewed the transcript of the

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

plea colloquy and conclude that Ferguson's plea was knowing, voluntary and intelligent and, as such, constitutes a waiver of any alleged defect that occurred prior to its entry.<sup>3</sup> Moreover, the plea bargain afforded Ferguson a substantial benefit and for that reason, too, he is foreclosed from challenging it.<sup>4</sup>

(7) Ferguson's third claim that his sentence was unfair and should be reduced is meritless. The sentences imposed were in line with the statutory limits.<sup>5</sup> Moreover, there is no suggestion that they were imposed on the basis of false or unreliable information.<sup>6</sup> As such, there is no basis for a reduction of Ferguson's sentences.

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

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<sup>3</sup>*Downer v. State*, Del. Supr., 543 A.2d 309, 312-13 (1988).

<sup>4</sup>*Id.*

<sup>5</sup>11 Del. C. § 512; 11 Del. C. § 841; 11 Del. C. § 4205.

<sup>6</sup>*Walt v. State*, Del. Supr., 727 A.2d 836, 840 (1999).

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/Joseph T. Walsh  
Justice