

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN MAYHEW,	§
	§
Defendant Below-	§ No. 552, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN95-02-1067 thru -1068,
Plaintiff Below-	§ -1074 thru -1076, -1079 thru -1080,
Appellee.	§ and -1083 thru -1084

Submitted: May 14, 2001

Decided: June 25, 2001

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

ORDER

This 25th day of June 2001, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, John Mayhew, pled guilty in August 1995 to third degree escape, several counts of theft, attempted theft, and receiving stolen property. The Superior Court sentenced Mayhew to a total of eight years imprisonment, suspended after four years for four years of probation. In October 2000, Mayhew was found to be in violation of his probation. The Superior Court revoked Mayhew's probation and sentenced

him to two and a half years at Level V, suspended after two years for six months at Level IV. This is Mayhew's appeal from that ruling.

(2) Mayhew's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Mayhew's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Mayhew's attorney informed him of the provisions of Rule 26(c) and provided Mayhew with a copy of the motion to withdraw and the accompanying brief. Mayhew also was informed of his right to supplement his attorney's presentation. Mayhew has raised two points for this Court's consideration. The State has responded to Mayhew's points as well as to the position taken by Mayhew's counsel and has moved to affirm the Superior Court's decision.

(3) 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) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this 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.*

(4) Mayhew's first point is that "the sentences violates [sic] the terms of my contract for the re-entry program." Whatever terms Mayhew may be referring to, we find no error or abuse of discretion in the Superior Court's finding that Mayhew had violated his probation. The evidence presented at the violation hearing established not only that Mayhew had violated the terms of the re-entry program by failing to report to Plummer Center, but that he had violated his probation by committing new offenses, including two bank robberies.

(5) Mayhew's second point is that he received ineffective assistance of counsel at his violation hearing. Mayhew, however, has made no concrete allegations of cause or actual prejudice in order to substantiate his claim to any degree. Accordingly, this claim must fail.

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

**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).

conscientious effort to examine the record and the law and has properly determined that Mayhew 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/Joseph T. Walsh
Justice