

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL DICKSON,	§
	§
Defendant Below-	§ No. 215, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 1005001870
Plaintiff Below-	§
Appellee.	§

Submitted: September 20, 2011

Decided: November 22, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

**ORDER**

This 22<sup>nd</sup> day of November 2011, 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) In March 2011, a Superior Court jury convicted the defendant-appellant, Daniel Dickson, of two counts of first degree robbery, two counts of possession of a firearm during the commission of a felony, third degree burglary, wearing a disguise during the commission of a felony, second degree conspiracy, and second degree reckless endangering. On April 12, 2011, the Superior Court sentenced Dickson to a total period of sixty-eight years at Level V incarceration to

be suspended after serving twelve years for a period of decreasing levels of supervision. This is Dickson's direct appeal.

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

(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.<sup>1</sup>

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<sup>1</sup>*Penson v. Ohio*, 488 U.S. 75, 83 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

(4) Among other things, the record at trial established that, on the morning of May 3, 2010, police were called to an address in Dover in response to a call reporting a home invasion in progress. The victims inside the house were brothers, Michael and Eric Griffith. Both testified at trial that two masked men in black hooded sweatshirts and black pants broke into their home, pointed guns at them, demanded money, and struck them each several times in the head with guns. The robbers took over \$900 in cash and a handgun. The robbers ran out the back door of the house, and the victims ran out the front door where they encountered arriving police officers. The victims saw the police with the two intruders in their custody. Eric recognized Daniel Dickson as someone he was acquainted with and identified him as one of the intruders at trial. One of the responding officers also testified at trial that, upon Dickson's arrest, officers found a 9 mm handgun, fully loaded, laying on the ground beside Dickson's right leg and a black mask around Dickson's neck. Dickson also was found in possession of two stacks of cash with IDs belonging to the Griffith brothers.

(5) Dickson enumerates five overlapping arguments for this Court's consideration on appeal. First, he contends that neither the State nor the defense properly investigated evidence that a third co-conspirator participated in the robbery. Second, Dickson asserts that the State offered him a plea bargain to provide information and testimony about the alleged third party but improperly

withdrew the deal after Dickson refused to cooperate. Third, he argues that there was no forensic evidence offered to prove that he had a gun in his possession. Fourth, he contends that there was reasonable doubt that the guns found in the victims' backyard belonged to either codefendant because both victims owned guns and could have put the guns in the yard. Finally, Dickson asserts that the victims were offered plea deals in their own pending criminal actions in exchange for their testimony against Dickson. We address these claims in order.

(6) Dickson's first two claims relate to an alleged, unidentified third co-conspirator. Dickson first appears to argue that if the State and defense counsel had properly investigated this person, then it would have raised reasonable doubt with the jury about Dickson's involvement in the crime. We disagree. The evidence presented against Dickson at trial reflected that he was apprehended in the act of fleeing the crime scene with a mask, the proceeds of the robbery, and the victims' IDs in his pockets. Upon Dickson's arrest, officers found a gun lying on the ground beside him. Even assuming a third conspirator was involved in the crime, it would not lessen Dickson's culpability for the crimes charged based on the evidence presented.<sup>2</sup> Viewing the evidence in the light most favorable to the State, we conclude that any rational trier of fact could have found Dickson guilty beyond a reasonable doubt given the overwhelming direct and circumstantial

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<sup>2</sup> See DEL. CODE ANN. tit. 11, § 271(2)(b) (2007) (providing, among other things, that co-conspirators are equally culpable for crimes they commit).

evidence presented against him.<sup>3</sup> Moreover, we find no merit to Dickson's suggestion that the State improperly withdrew a plea offer because Dickson refused to identify the alleged third co-conspirator. A defendant has no constitutional right to a plea bargain.<sup>4</sup> In the absence of any detrimental reliance by an accused on the State's offer, the State may unilaterally revoke an unaccepted plea offer.<sup>5</sup> Accordingly, we reject Dickson's first two claims on appeal.

(7) Dickson's next two claims assert that he could not be found guilty because the State failed to present forensic evidence that he had possessed a gun and that there was reasonable doubt about his possession of a gun because the guns found in the backyard could have been put there by someone else. We reject both of these contentions. As we have already stated, both the direct and circumstantial evidence presented at trial was more than sufficient to prove beyond a reasonable doubt that Dickson had participated in the robbery of both brothers while in possession of a gun. In light of such strong evidence against Dickson, including eyewitness testimony, forensic evidence simply was not required.<sup>6</sup>

(8) Dickson's final complaint is that the victims were offered plea bargains in their own pending criminal cases in exchange for their testimony against Dickson. The record reflects that during the cross-examination of Eric

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<sup>3</sup> See *Hardin v. State*, 844 A.2d 982, 989 (Del. 2004).

<sup>4</sup> *Washington v. State*, 844 A.2d 293, 295 (Del. 2004).

<sup>5</sup> *Shields v. State*, 374 A.2d 816, 820 (Del. 1977).

<sup>6</sup> See *Staats v. State*, 961 A.2d 514, 510 (Del. 2008).

Griffith, defense counsel established that the witness himself had been involved in illegal drug activities during the time period in which the robbery occurred. There was no evidence presented, however, to suggest that either victim was offered a plea deal on pending charges in order to testify against Dickson. This contention is simply unsupported by the record and provides no basis for relief.

(9) The Court has reviewed the record carefully and has concluded that Dickson's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Dickson's counsel has made a conscientious effort to examine the record and the law and has properly determined that Dickson 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/ Randy J. Holland

Justice