

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TROY HAMMOND,	§
	§
Defendant Below-	§ No. 240, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0804009645
Plaintiff Below-	§
Appellee.	§

Submitted: August 21, 2012  
Decided: September 12, 2012

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

**ORDER**

This 12<sup>th</sup> day of September 2012, 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, Troy Hammond, pled guilty in December 2008 to one count of Possession with Intent to Deliver a Schedule II Controlled Substance. The Superior Court sentenced Hammond to eight years at Level V incarceration to be suspended immediately for six months at Level IV home confinement followed by eighteen months at Level III probation. Thereafter, Hammond was found in violation of the terms of his probation on three separate occasions. In April 2012, Hammond was found

guilty of his fourth VOP. The Superior Court sentenced him to seven years at Level V incarceration to be suspended after serving two years in prison for one year at Level III probation. This is Hammond's appeal from that sentence.

(2) Hammond's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Hammond's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Hammond's attorney informed him of the provisions of Rule 26(c) and provided Hammond with a copy of the motion to withdraw and the accompanying brief. Hammond also was informed of his right to supplement his attorney's presentation. Hammond filed a response, which does not raise any legal arguments, but simply contends that he was 17 when he originally was sentenced and that he continues to be jailed for the same crime as result of technical probation violations. The State has responded to Hammond's submission, as well as to the position taken by Hammond's counsel, and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the 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>

(4) The record in this case reflects that, at Hammond's contested VOP hearing, a Wilmington police officer testified that he witnessed Hammond engage in a hand-to-hand drug transaction with the driver of a jeep. The driver was stopped and searched and was found in possession of a bundle of heroin. Hammond was arrested on a new criminal charge of Drug Dealing<sup>2</sup> and subsequently was charged with his fourth VOP as a result. Thus, contrary to Hammond's assertion, his fourth VOP charge was for more than a mere "technical" violation.

(5) In a VOP hearing, the State is only required to prove by a preponderance of the evidence that the defendant violated the terms of his probation.<sup>3</sup> A preponderance of evidence means "some competent evidence" to "reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation."<sup>4</sup> The transcript of the VOP hearing in this case reflects

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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).

<sup>2</sup> DEL. CODE ANN. tit. 16, § 4754(1) (Supp. 2011). His new criminal case remains pending in the Superior Court.

<sup>3</sup> *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

<sup>4</sup> *Id.* (quoting *Collins v. State*, 897 A.2d 159, 160 (Del. 2006)).

sufficient competent evidence to uphold the Superior Court's VOP adjudication.

(6) Once the Superior Court found Hammond had violated the terms of his probation, it was authorized to require Hammond to serve the balance of the original sentence imposed or any lesser sentence.<sup>5</sup> In this case, the Superior Court only imposed a two-year prison term followed by a one-year probationary term. Although the Superior Court's sentence was harsher than the sentence recommended by the probation officer, it was far less than the balance of Level V time remaining from Hammond's original sentence. The Superior Court indicated that it was imposing a harsher sentence because it was Hammond's fourth VOP and because the violation resulted from Hammond's arrest on a new drug dealing charge, the same criminal conduct that resulted in his original conviction. Under these circumstances, we find no merit to Hammond's complaint about the Superior Court's sentence.

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

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<sup>5</sup> *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

conscientious effort to examine the record and the law and has properly determined that Hammond 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/ Carolyn Berger  
Justice