

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER L. JOHNSON,	§
	§
Defendant Below-	§ No. 469, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK00-02-0283
Plaintiff Below-	§
Appellee.	§

Submitted: March 14, 2001

Decided: April 16, 2001

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

ORDER

This 16th day of April 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 June 2000, a Superior Court jury found the defendant-appellant, Christopher L. Johnson, guilty of escape after conviction. The Superior Court sentenced Johnson as a habitual offender to sixteen years at Level V incarceration. This is Johnson's direct appeal.

(2) Johnson's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Johnson's counsel asserts, based upon a complete and careful review of the record, there are no arguably appealable

issues. By letter, Johnson's attorney informed him of the provisions of Rule 26(c) and provided a copy of the motion to withdraw and the accompanying brief. Johnson also was informed of his right to supplement his attorney's presentation. Johnson has raised several issues for this Court's consideration. The State has responded to the position taken by Johnson's counsel as well as the points raised by Johnson 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.¹

(4) Johnson raises the following three claims on appeal: (i) the habitual offender status hearing should have been held separately from his sentencing; (ii) the State's witness, Detective Liam Sullivan, lied under oath; and (iii) at the time of Johnson's arrest, Detective Sullivan had a warrant for

¹*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).

a murder charge not an escape charge. We find no merit to any of these claims. Accordingly, we affirm.

(5) At trial, the State presented the testimony of Kent Raymond, a counselor for the Department of Correction at the Morris Community Correctional Center (“MCCC”). Raymond testified that Johnson had been sentenced by the Superior Court for a probation violation on June 4, 1999 and had been ordered to participate in residential drug treatment. Johnson was transferred from Gander Hill prison to MCCC on August 11, 1999. Raymond further testified that, upon entering MCCC, Johnson signed various forms acknowledging his obligation to remain at the facility and also acknowledging MCCC’s leave policies. Johnson signed a form acknowledging that, if permitted to leave the facility, he was required to remain within one hour’s contact of the facility and that his failure to do so could result in his being placed on escape status. Raymond testified that Johnson was given a pass on September 21, 1999 to leave MCCC to attend a Family Court hearing. Johnson was permitted to leave MCCC at 7:45 am and was directed to return no later than 3:30 p.m. Johnson failed to return to the facility, and an escape warrant was issued the same day.

(6) The State also presented the testimony of Detective Liam Sullivan. Sullivan testified that, on December 21, 1999, he received a

telephone call from a past proven reliable informant informing him of Johnson's whereabouts. Sullivan confirmed that Johnson had an outstanding escape warrant against him. Sullivan then went to the location identified by the informant. He knocked on the door, which was opened by a female, and saw Johnson, whom he knew by sight, sitting in the apartment. Sullivan arrested Johnson without incident. Johnson did not testify at trial.

(7) After the jury found Johnson guilty of escape, the record reflects that the State filed a motion to declare Johnson an habitual offender. The State presented certified copies of docket sheets for three prior felony convictions. Johnson and his counsel stipulated that the prior convictions qualified as predicate offenses under the habitual offender statute, 11 Del. C. § 4214(a). Thereafter, the Superior Court sentenced Johnson to sixteen years in jail.

(8) Johnson's first claim on appeal is that the Superior Court erred by failing to hold an habitual offender status hearing separate from his sentencing hearing. Although this Court has found that the procedural requirements of the habitual offender statute contemplate a hearing on the defendant's habitual offender status separate from the sentencing,² that requirement does not apply to a defendant like Johnson who stipulates to the

²*Bailey v. State*, Del. Supr., 450 A.2d 400, 404 (1982).

prior requisite convictions set forth in the State's motion.³ In this case, Johnson's stipulation to the prior requisite convictions constituted a waiver of the hearing on his habitual offender status. Thus, Johnson's first claim on appeal is without merit.

(9) Johnson next complains that Detective Sullivan committed perjury at trial. Johnson claims that Sullivan did not receive a telephone call from a confidential informant but instead received information about Johnson's whereabouts from an individual who was Johnson's codefendant in another criminal matter. Johnson points to no credible evidence in the record to support this allegation. Accordingly, we find this claim to be without merit.

(10) Finally, Johnson claims when he was arrested, Detective Sullivan did not have an escape warrant but instead had an arrest warrant for murder. Even assuming Johnson's assertion to be true, Johnson does not argue there was any legal significance to the warrant issue. He does not dispute that an outstanding escape warrant for him existed at the time of his arrest on December 21, 1999. Nor does he argue that his arrest for escape was in any way illegal. Accordingly, we find no merit to this claim.

³*Abdul-Akbar v. State*, Del. Supr., No. 447, 1997, Berger, J. (Dec. 4, 1997) (ORDER).

(11) This Court has reviewed the record carefully and has concluded that Johnson's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Johnson's counsel has made a conscientious effort to examine the record and has properly determined that Johnson 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