

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEVEN D. MERILLO,	§	
	§	
Defendant Below,	§	No. 500, 2000
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware, in
	§	for Kent County in Cr.A.No.
STATE OF DELAWARE,	§	IK97-12-0450.
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9712005771

Submitted: February 28, 2001
Decided: April 2, 2001

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

ORDER

This 2nd 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 March 1998, Steven D. Merillo pled guilty to first degree burglary. Pursuant to the plea agreement, the State *nolle prossed* seven other charges. In May 1998, after a presentence investigation, Merillo was sentenced to six years at Level V incarceration, suspended after three years for six months at a Level IV residential treatment program, nine months at

Level IV home confinement, nine months at Level III probation, and 12 months at Level II probation.

(2) On September 10, 2000, the Department of Correction issued an administrative warrant that discharged Merillo from the Level IV residential treatment Crest Program for having violated certain rules and regulations of the Program and thus the conditions of his Level IV supervision. Specifically, the warrant alleged that Merillo (i) threatened physical violence during a verbal altercation with another resident on September 10, 2000, and (ii) admitted to stealing another resident's watch on September 3, 2000.

(3) At a violation of probation ("VOP") hearing on September 18, 2000, the Superior Court found Merillo guilty of having violated his Level IV supervision. The Superior Court sentenced Merillo to three years at Level V imprisonment, suspended after completion of the short term Key Program, for one year at the Level IV Crest Program, suspended after successful completion of that Program, for six months at Level IV home confinement, followed by six months at Level III probation.

(4) On appeal from the VOP conviction and sentencing, Merillo's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c).

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

(5) 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

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).

(6) Merillo claims that he was entitled to, but did not receive, a prison “write-up” and an internal prison disciplinary hearing for the alleged Crest Program violations. Merillo appears to claim that, had he appeared before the prison disciplinary authority, the charges would have been dismissed, and he would not have been charged with having violated probation. In support of his claim, Merillo states that the prison wrote up the person with whom he had a verbal altercation on September 10, 2000, but that the write-up was “thrown out” by the prison disciplinary board on September 12, 2000.

(7) Merillo provides no support for his claim that he was entitled to a write-up and an internal prison disciplinary hearing for the alleged Crest Program violations. Furthermore, his claim is irrelevant to the disposition of this VOP appeal, as is Merillo’s claim that the individual with whom he was having a verbal altercation was not punished.

(8) Merillo admitted at the VOP hearing that he stole another resident’s watch, and he acknowledged that he had a verbal altercation with another resident, although he denied physically threatening him. Thus, Merillo’s own admissions provided an adequate basis for the Superior Court to conclude that he was properly discharged from the Crest Program

for having violated rules and regulations of the Program, and that he thereby violated a condition of his May 1998 sentence.²

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

² See *Liles v. State*, Del. Supr., No. 105, 1992, Holland, J., 1992 WL 401568 (Dec. 7, 1992) (ORDER) (finding that the defendant's own admissions during the probation revocation hearing corroborated the counselor's statements).