

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| DARWIN SAVAGE, | § | |
| | § | No. 361, 2002 |
| Defendant Below, | § | |
| Appellant, | § | Court Below—Superior Court |
| | § | of the State of Delaware, in |
| v. | § | and for Sussex County in Cr. |
| | § | ID No. 0102021014. |
| STATE OF DELAWARE, | § | |
| | § | |
| Plaintiff Below, | § | |
| Appellee. | § | |

Submitted: November 19, 2002
Decided: January 31, 2003

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

ORDER

This 31st day of January 2003, 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) By amended indictment, a Sussex County grand jury charged the appellant, Darwin Savage, with Possession with Intent to Deliver Cocaine, Maintaining a Vehicle for Keeping Controlled Substances, Endangering the Welfare of a Child, Possession of Drug Paraphernalia, and Driving While Suspended or Revoked. After a jury trial in September 2001, Savage was found guilty on all charges.

(2) In January 2002, the Superior Court granted Savage's motion for a new trial. Prior to trial, however, Savage pleaded guilty to Possession of a Firearm by a Person Prohibited, Possession with Intent to Deliver Marijuana, Driving While Suspended or Revoked, Possession of Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, and Maintaining a Vehicle for Controlled Substances.

(3) Prior to sentencing, Savage moved to withdraw his guilty plea. Savage argued that there was no proof of his guilt. The Superior Court denied Savage's motion to withdraw on the bases that the plea was knowing and voluntary, and that Savage, under oath, had admitted guilt to each of the charges. The Superior Court then sentenced Savage to a total of twenty-two years at Level V, suspended after serving nine years and upon successful completion of the Key Program, for one year at a Level IV Residential Substance Abuse Treatment Program, followed by one year of Level III Aftercare, followed by decreasing levels of probation. This appeal followed.

(4) Savage's defense counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief is twofold. First, the Court must be satisfied that defense

counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal. Second, the 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

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

(6) Superior Court Criminal Rule 32(d) provides that, prior to sentencing, the Superior Court may allow a defendant to withdraw a guilty plea “upon a showing by the defendant of any fair and just reason.” The Superior

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).

Court's decision on a motion to withdraw a guilty plea is reviewable by this Court only for an abuse of the trial court's discretion.²

(7) It was not an abuse of discretion for the Superior Court to deny Savage's motion to withdraw his guilty plea. Although Savage's withdrawal motion argued in a conclusory fashion that there was no proof of his guilt, Savage *admitted* his guilt to the Superior Court during the guilty plea colloquy. "Conclusory allegations of innocence are not sufficient to require withdrawal of a guilty plea, especially when the defendant has admitted his guilty in the plea colloquy."³

(8) On appeal, Savage claims that his guilty plea was not knowing and voluntary because he "did not have a clear understanding of [the] sentencing consequences of his plea." Specifically, Savage maintains that he signed the guilty plea with the understanding that he would receive no more than four years in prison.

(9) Savage's claim is unconvincing in view of the Truth-in-Sentencing Guilty Plea Form signed by Savage and his statements at the plea colloquy. The written forms that Savage signed clearly state that Savage faced a total

²*Raison v. State*, 469 A.2d 424 (Del. 1983).

³*Russell v. State*, 1999 WL 507303 (Del. Supr.).

consecutive maximum penalty of twenty-two years and six months of incarceration, and that the minimum mandatory penalty was four years. Moreover, during the plea colloquy Savage represented to the Superior Court that he was entering his plea with the understanding that he was facing a minimum mandatory penalty of four years of incarceration and a maximum penalty of twenty-two years and six months.⁴ In the absence of clear and convincing evidence to the contrary, Savage is bound by his answers on the Truth-in-Sentencing Guilty Plea Forms and by his testimony prior to the acceptance of the guilty plea.⁵

(10) Savage raises several issues that concern his first trial.⁶ All alleged errors pertaining to Savage's first trial, however, were remedied and rendered moot by the new trial that was granted to Savage in January 2002, prior to the entry of his guilty plea. Savage cannot now complain of errors that allegedly occurred during his first trial.

⁴Hr'g Tr., Mar. 25, 2002.

⁵*Somerville v. State*, 703 A.2d 629, 632 (1997).

⁶Savage alleges (i) insufficient evidence; (ii) the admission of hearsay evidence; (iii) inconsistent testimony; (iv) a racially biased jury; (v) improper admission of prior bad acts evidence; and (vi) prosecutorial misconduct during closing argument.

(11) This Court has reviewed the record carefully and has concluded that Savage's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Savage's counsel has made a conscientious effort to examine the record and has properly determined that Savage could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger
Judge