

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HAROLD J. STEVENSON,	§
	§
Defendant Below-	§ No. 290, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. No. IK03-02-0598
Plaintiff Below-	§ Cr. ID 0301013593
Appellee.	§

Submitted: August 29, 2003

Decided: October 6, 2003

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

ORDER

This 6th day of October 2003, 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, Harold Stevenson, pled guilty in May 2003 to one count of first degree robbery. In exchange for his guilty plea, the State dismissed four other criminal charges against Stevenson. The Superior Court immediately sentenced Stevenson, in accordance with the recommendation in the plea agreement, to ten years at Level V incarceration, to be suspended after serving three years for one year at Level IV work release, followed by one year at Level III

probation, followed by one year at Level II probation. This is Stevenson's direct appeal.

(2) Stevenson's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Stevenson's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Stevenson's attorney informed him of the provisions of Rule 26(c) and provided Stevenson with a copy of the motion to withdraw and the accompanying brief. Stevenson also was informed of his right to supplement his attorney's presentation. Stevenson has raised two issues for this Court's consideration. The State has responded to the position taken by Stevenson's counsel, as well as the points raised by Stevenson, 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) Stevenson first claims that his trial counsel was ineffective. This Court, however, generally will not consider claims of ineffective assistance of counsel for the first time on direct appeal.² To the extent Stevenson asserts that his guilty plea was not voluntary due to his counsel's alleged ineffectiveness, the record does not support such a claim. Stevenson testified under oath that no one forced him to plead guilty, that he was satisfied with his counsel's representation, and that he was pleading guilty because he was, in fact, guilty. In the absence of clear and convincing evidence to the contrary, Stevenson is bound by these representations.³ Stevenson has not presented any evidence that calls into question the voluntary nature of his guilty plea.

(5) Stevenson's second claim is that there were alleged deficiencies in his grand jury indictment. Stevenson's voluntary plea of guilty constitutes a waiver of any alleged defects or errors occurring before the entry of the plea.⁴

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).

² *Duross v. State*, 494 A.2d 1265, 1269 (Del. 1985).

³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁴ *Downer v. State*, 543 A.2d 309, 312 (Del. 1988).

(6) This Court has reviewed the record carefully and has concluded that Stevenson's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Stevenson's counsel has made a conscientious effort to examine the record and the law and has properly determined that Stevenson 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/ Myron T. Steele
Justice