

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM J. WEBB, JR.,	§	
	§	
Defendant Below-	§	No. 110, 2002
Appellant,	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. Nos. 99-08-0767, 0768
Plaintiff Below-	§	99-08-2482
Appellee.	§	VN97-03-0286-01

Submitted: December 2, 2002

Decided: January 28, 2003

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices

ORDER

This 28th 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) The defendant-appellant, William J. Webb, Jr., filed this appeal from the Superior Court's February 28, 2002 order resentencing him to 10 years incarceration at Level V, to be suspended after 5 years for decreasing levels of probation, on his conviction of Burglary in the First Degree.¹

¹This matter was remanded to the Superior Court for the limited purpose of resentencing Webb on this conviction because the Superior Court had incorrectly sentenced him to 12 years incarceration at Level V, which exceeded the statutory maximum of 10 years. DEL. CODE ANN. tit. 11, §§ 826, 4205(b) (3). The remainder of the Superior Court's original sentencing order was unchanged. *Webb v. State*, Del. Supr., No. 589, 2000, Veasey, C.J. (Dec. 7, 2001).

(2) Webb's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). 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) 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; and (b) 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.²

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

²*Penon 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).

(4) Webb raises one issue for this Court's consideration. He claims that he should be permitted to withdraw his plea of guilty to Burglary in the First Degree because it was involuntary.

(5) Because this issue was decided already in Webb's previous appeal,³ he may not raise it again in the instant appeal.⁴ This matter was remanded to the Superior Court for the limited purpose of resentencing Webb in accordance with the statutory maximum penalty. Because there is no evidence that the Superior Court failed to carry out this Court's order with respect to Webb's resentencing, the Superior Court's judgment must be affirmed.⁵

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

³*Webb v. State*, Del. Supr., No. 589, 2000, Veasey, C.J. (Dec. 7, 2001).

⁴SUPER. CT. CRIM. R. 61(i) (4).

⁵SUPR. CT. R. 8.

BY THE COURT:

/s/ Myron T. Steele
Justice