

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN L. FOREHAND,	§
	§
Defendant Below-	§ No. 515, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. 99-05-0184 and
Plaintiff Below-	§ 95-05-1396
Appellee.	§

Submitted: January 28, 2002
Decided: March 22, 2002

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

ORDER

This 22nd day of March 2002, 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, Kevin L. Forehand, pled guilty in October 1995 to possession of a controlled substance within 300 feet of a park. He was sentenced to three years at Level V incarceration, which was suspended in its entirety for probation. In November 1999, Forehand pled guilty to trafficking cocaine. The Superior Court sentenced Forehand to a three year minimum mandatory term at Level V incarceration, but in accordance with 11 Del. C. § 6712, diverted Forehand to the boot camp program. In September 2001, the

Superior Court found that Forehand had violated the terms of his probation for both offenses and thus sentenced him to three years minimum mandatory incarceration followed by probation. This is Forehand's appeal from that order.

(2) Forehand's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Forehand's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Forehand's attorney informed him of the provisions of Rule 26(c) and provided Forehand with a copy of the motion to withdraw and the accompanying brief. Forehand also was informed of his right to supplement his attorney's presentation. Forehand provided his counsel with two identical letters that appear to raise two cognizable issues. The State has responded to the position taken by Forehand's counsel, as well as the points raised by Forehand, and has moved to affirm the Superior Court's judgment.

(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) In the letter provided to his counsel, Forehand raises two identifiable issues for the Court to consider. First, Forehand complains that he should have been permitted to complete the Level III boot camp aftercare portion of his sentence while he was completing the Level IV Crest Program. Forehand also appears to assert that, because the probationary sentences on his two underlying convictions were ordered to be served consecutively, the Superior Court could not properly find him in violation of both probationary sentences. We find no merit to either contention.

(5) The Superior Court has discretion, within the statutory limits provided by law, to structure an offender's sentence in a way that flows the offender through decreasing levels of supervision. Each component of the trial court's sentence is "integral" to the overall sentencing scheme.² We find no merit to Forehand's contention that he should have been permitted to serve the Level IV and Level III portions of his sentence at the same time. Forehand admitted that never reported to his Level III probation officer in order to begin the boot camp aftercare portion of

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 *Nave v. State*, 783 A.2d 120, 122 (Del. 2001).

his sentence. Accordingly, we find no error in the Superior Court's conclusion that Forehand violated the terms of his probation.

(6) Furthermore, we find that the Superior Court did not err when it adjudicated Forehand guilty of violating the terms of both of his probationary sentences. This Court previously has recognized that a defendant's probationary sentence may be terminated "at any time."³ Accordingly, the Superior Court may properly revoke the unexecuted portion of a defendant's probationary sentence before it begins.⁴

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

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. Appellant's motion to withdraw is MOOT. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele

Justice

³ DEL. CODE. ANN. tit. 11, § 4333 (2001).

⁴ *Williams v. State*, 560 A.2d 1012, 1013 (Del. 1989).