IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY HOOD,	§	
	§	No. 340, 2001
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in
	§	Cr.A. No. VS98-04-0559-03.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9803021805

Submitted: January 16, 2002
Decided: March 18, 2002

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

O R D E R

This 18th 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) After a contested violation of probation hearing on July 17, 2001, the Superior Court adjudged the appellant, Anthony Hood, guilty of violating his probation and sentenced him to two years and 20 days at Level V, suspended after six months, for two years at Level III probation. Hood filed this appeal from his VOP conviction.

(2) Hood's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). Hood's counsel asserts that, based upon a complete and careful examination of the record, there are no arguable appealable issues. By letter, Hood's counsel informed him of the provisions of Rule 26(c) and provided Hood with a copy of the motion to withdraw, the hearing transcript, and the accompanying brief.

(3) Although informed of his right to supplement his counsel's presentation, Hood did not respond to his counsel's Rule 26(c) letter. Prior to that, however, Hood submitted to his counsel a letter that raised appeal issues. Counsel has submitted Hood's letter to this Court for consideration. The State has responded to the position taken by Hood's counsel as well as the issues raised by Hood and has moved to affirm the Superior Court's judgment.

(4) 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. First, this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims. Second, 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]

(5) The record reflects that Hood pled guilty in 1998 to a charge of Robbery in the First Degree. In exchange for the guilty plea, the State *nolle prossed* three other charges, including Possession of a Deadly Weapon During the Commission of a Felony. Thereafter, the Court found that Hood violated his probation on July 21, 2000 and again on March 9, 2001.

(6) On May 29, 2001, Hood was again charged with VOP. The administrative warrant alleged that Hood admitted to his probation officer that he had smoked crack cocaine within the preceding 24 hours. The warrant also alleged that an instant urinalysis administered to Hood tested positive for cocaine.

(7) At the July 21 VOP hearing, Hood's probation officer, Edward Chaffee, testified that Hood admitted on May 29, 2001, that he had used crack cocaine within the preceding 24 hours. Chaffee also testified that he administered an instant urinalysis on Hood on May 29, 2001, and that the test result was positive for cocaine. Moreover, Chaffee testified that on May 29, 2001, he observed a police officer remove from Hood "little baggies" containing "little chunks of yellowish

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[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).

material" that were later determined to be "flam" (*i.e.*, fake cocaine). Chaffee testified that Hood told him that he intended to sell the "crack cocaine" to gain money.[2]

(8) At the hearing, Hood denied the charges. Hood testified that "Mr. Chaffee never asked [him] anything," and that Chaffee was not "qualified to say what's in the instant urine test because he's not trained to do that."[3]

(9) On appeal, Hood raises three evidentiary claims: (i) the instant urinalysis was inadmissible because Chaffee was not qualified to administer the test; (ii) Chaffee was not qualified to testify as an expert witness; and (iii) the results of the instant urinalysis were inadmissible hearsay. We find no merit to any of these contentions.

(10) Delaware law requires that there be competent evidence to support a finding of a VOP.[4] "The evidence in a VOP hearing, however, need only be 'such as to reasonably satisfy the judge that the conduct of the probationer has not been as

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[2] *See* VOP Hr'g Tr., July 17, 2001, at 4-6.

[3] *Id.* at 16.

[4] ***Brown v. State***, 249 A.2d 269, 272 (Del. 1968).

good as required by the conditions of probation.'"[5] Moreover, the rules of evidence do not apply in a VOP hearing.[6]

(11) In this case, Chaffee testified that he was trained in administering the instant urinalysis. Chaffee explained the procedure for administering the instant urinalysis, and he testified that the instant urinalysis he administered on Hood tested positive for cocaine. Chaffee also testified that Hood admitted on May 29, 2001, that he had consumed crack cocaine within the preceding 24 hours. Although Hood argues that all of this evidence against him was impermissible hearsay, we conclude that there was sufficient competent evidence in the record to support the Superior Court's determination that Hood violated his probation.

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

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[5] *Id.*

[6] *See* Del. Unif. R. Evid. 1101(b)(3).

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