IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL D. GLENN,	§	
	§	No. 276, 2002
Defendant Below-Appellant,	§	
	§	Court Below—Superior Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	Cr.A. Nos. IN01-09-0886, -0890
STATE OF DELAWARE,	§	and IN01-05-2093
	§	Cr. ID 0103008294 and
Plaintiff Below-Appellee.	§	0108021782
	§	

Submitted: December 3, 2002
Decided: January 16, 2003

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

O R D E R

This 16th day of January 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, Michael Glenn, was charged in four separate indictments with numerous counts of forgery, theft, identity theft, and issuing bad checks. He pled guilty in April 2002 to two counts of second degree forgery and one count of identity theft. In exchange for his agreement to plead guilty as an habitual offender to the three listed offenses, the State agreed to dismiss the remaining forty-one charges. The Superior Court accepted Glenn's guilty plea and sentenced him, pursuant to 11 Del. C. § 4214(a), to a total of nine years at Level V

incarceration, suspended after five years minimum mandatory for decreasing levels of supervision. This is Glenn's direct appeal.

(2) Glenn's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Glenn's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Glenn's attorney informed him of the provisions of Rule 26(c) and provided Glenn with a copy of the motion to withdraw and the accompanying brief. Glenn also was informed of his right to supplement his attorney's presentation. Glenn has responded with several arguments regarding his sentencing as an habitual offender. The State has responded to Glenn's points, as well as the position taken by Glenn's counsel, 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) Glenn contends that his habitual offender sentence is illegal for several reasons: (i) the Superior Court failed to hold a separate habitual offender hearing prior to sentencing him; (ii) the prosecutor misstated his prior criminal record when he informed the judge that Glenn previously had been convicted of first degree robbery when, in fact, Glenn had been convicted of second degree robbery; and (iii) the Superior Court erred in imposing a minimum mandatory sentence because his fourth conviction, identity theft, was a non-violent felony and thus did not warrant a minimum mandatory sentence under Section 4214(a).

(5) We find no merit to any of these contentions. Glenn agreed during the guilty plea proceedings that he qualified for habitual offender status. By accepting the plea agreement, which contained this stipulation, Glenn waived his right to a separate hearing to determine his status as an habitual offender.[2] Furthermore, the Superior Court sentenced Glenn in accordance with his plea agreement. Accordingly, Glenn can show no

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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).

[2] *Parker v. State*, Del. Supr., No. 244, 2002, Veasey, C.J. (July 26, 2002).

prejudice resulting from the prosecutor's misstatement about his prior criminal history, which Glenn never contradicted despite the opportunity to do so. Finally, Glenn's contention that the Superior Court erred by sentencing him to a minimum mandatory term of incarceration is without merit. Pursuant to 11 Del. C. § 4214(a), the Superior Court has discretion to impose up to a life sentence for a fourth felony conviction. Although Section 4214(a) requires the Superior Court to impose a minimum mandatory sentence if the defendant's fourth felony conviction is for a violent felony, it does not prohibit the Superior Court from imposing a minimum mandatory sentence if the fourth felony is a non-violent felony, as in Glenn's case.

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