

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TIMOTHY O. ANDERSON,	§	
	§	
Defendant Below-	§	No. 322, 2003
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. Nos. IN02-05-1495-1499;
	§	1501; 2238; 2239
Plaintiff Below-	§	2240
Appellee.	§	

Submitted: February 27, 2004
Decided: April 5, 2004

Before **HOLLAND, STEELE** and **JACOBS**, Justices

ORDER

This 5th day of April 2004, 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, Timothy O. Anderson, was found guilty by a Superior Court jury of Possession with Intent to Deliver Cocaine, Possession of Marijuana, Maintaining a Dwelling for the Keeping of Controlled Substances, Tampering with Physical Evidence, Conspiracy in the Second Degree, Possession of Drug Paraphernalia, and three counts of Endangering the Welfare of a Child.

He was sentenced to a total of 20 years incarceration at Level V, to be suspended after 5 years for decreasing levels of probation. This is Anderson's direct appeal.

(2) Anderson's trial 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.¹

(3) Anderson's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Anderson's counsel informed Anderson 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. Anderson also was informed of his right to supplement his attorney's presentation. Anderson responded with a brief that raises six issues for this Court's consideration. The State has responded to the

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).

position taken by Anderson's counsel as well as the issues raised by Anderson and has moved to affirm the Superior Court's judgment.

(4) Anderson raises six issues for this Court's consideration. He claims that: (a) there was insufficient evidence presented at trial to convict him of either possession of or intent to deliver illegal drugs; (b) the prosecutor made improper remarks during the trial; (c) the trial judge failed to control the conduct of the attorneys and witnesses at trial; (d) the trial judge was prejudiced against him; (e) the jury instructions contained errors of law; and (f) he received ineffective assistance of counsel. Because Anderson's first five claims were not raised at trial, they will be reviewed on appeal for plain error.² Because his final claim of ineffective assistance of counsel was not decided on the merits in the Superior Court, it will not be considered in this direct appeal.³

(5) The transcript of the trial reflects that, on May 10, 2002, Anderson and his girlfriend, Janiece Mayfield, were living at 113 Bayard Drive, Wilmington, Delaware, with their three minor children. Early in the morning they were awakened by a banging noise. The police, who were executing a search warrant on information that Anderson was dealing in illegal drugs, entered the residence with

² *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (An error is "plain" if it is "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.")

³ *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

guns drawn. As Detective Don Pope took Anderson into custody, he noticed that Anderson's left leg was wet.

(6) Mayfield subsequently asked to use the toilet and reported that it was stopped up. Suspecting that Anderson had flushed illegal drugs down the toilet, Detective Pope dismantled the toilet and found a black purse inside. The bag contained several bags of a hard, yellowish-white substance later determined to be cocaine weighing a total of 1 gram, as well as several bags of a leafy, green substance later determined to be marijuana weighing a total of 5 grams. Mayfield told Detective Pope that Anderson used illegal drugs and associated with people who sold illegal drugs. At trial, Detective Pope testified that, in his opinion, the drugs had been packaged for sale rather than for personal use.

(7) In reviewing a claim of insufficiency of the evidence, this Court determines whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.⁴ The evidence presented at trial clearly was sufficient

⁴ *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997).

to support Anderson's convictions of Possession of Marijuana⁵ and Possession with Intent to Deliver Cocaine.⁶

(8) Anderson next three claims are that the prosecutor made improper remarks during the trial, the trial judge failed to control the conduct of the attorneys and witnesses at trial, and the trial judge was prejudiced against him. We have reviewed carefully the trial transcript and there simply is no record support for any of these claims and, therefore, no evidence of any error, plain or otherwise.

(9) Anderson's final claim is that the trial judge improperly instructed the jury. We find no support for that claim in the record, since the jury instructions correctly stated the law and enabled the jury to perform its duty.⁷ Moreover, when the jury asked the judge if they had to find Anderson guilty of the drug charges in order to convict him of child endangerment, the judge properly responded in the affirmative. We find no evidence of any error, plain or otherwise, in connection with this claim.

(10) This Court has reviewed the record carefully and has concluded that Anderson's appeal is wholly without merit and devoid of any arguably appealable issue. We are also satisfied that Anderson's counsel has made a conscientious

⁵ Del. Code Ann. tit. 16, § 4754. This was a lesser-included offense of the original charge of Possession with Intent to Deliver Marijuana. Del. Code Ann. tit. 16, § 4752.

⁶ Del. Code Ann. tit. 16, § 4751.

⁷ *Cabrera v. State*, 747 A.2d 543, 545 (Del. 2000).

effort to examine the record and has properly determined that Anderson 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/ Jack B. Jacobs
Justice