

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THURMAN R. WHITE,	§	
	§	
Defendant Below-	§	No. 418, 2003
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. Nos. 02-12-1373-1375
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: March 15, 2004
Decided: April 20, 2004

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

ORDER

This 20th 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, Thurman R. White, pleaded guilty to Assault in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony and Endangering the Welfare of a Child. He was sentenced to a total of twelve years incarceration at Level V, to be suspended after eight years for decreasing levels of probation. This is White's direct appeal of his sentence.

(2) White'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.¹

(3) White's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, White's counsel informed White 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. White also was informed of his right to supplement his attorney's presentation. White responded with a brief that raises several issues for this Court's consideration. The State has responded to the position taken by White's counsel as well as the issues raised by White and has moved to affirm the Superior Court's judgment.

(4) White raises several issues for this Court's consideration, which may fairly be summarized as follows: The Superior Court abused its discretion by imposing a sentence that was too harsh.

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).

(5) The record reflects that White attacked Tania Graham, the mother of his child, at her home one night. He repeatedly cut her throat with a knife, leaving permanent scars, in the presence of his own child and Ms. Graham's four other children. White also attacked two of the children with the knife.

(6) Under Delaware law, appellate review of sentences is extremely limited.² Appellate review of a sentence generally ends upon a determination that the sentence is within the statutory limits prescribed by the legislature.³ Moreover, a sentence within the statutory limits that exceeds the "Truth in Sentencing" or "TIS" guidelines provides no basis for an appeal because the guidelines are voluntary and non-binding.⁴

(7) Under the statutes in place at the time these crimes occurred,⁵ a charge of Assault in the First Degree carried a maximum prison term of ten years.⁶ A charge of Possession of a Deadly Weapon During the Commission of a Felony carried a maximum prison term of twenty years.⁷ Finally, a charge of Endangering

² *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

³ *Id.*

⁴ *Id.* at 845.

⁵ Changes to these statutes affecting the grade and penalty of certain offenses became effective on June 30, 2003. 74 Del. Laws c. 106 eff. June 30, 2003.

⁶ Del. Code Ann. tit. 11, §§ 613; 4205(b)(2) (2001).

⁷ Del. Code Ann. tit. 11, §§ 1447; 4205(b)(3) (2001).

the Welfare of a Child carried a maximum prison term of one year.⁸ As such, White's sentences were well within the statutory limits. Moreover, in a case such as this where, as was noted at the sentencing hearing, the defendant had prior convictions, the offenses exhibited excessive cruelty and the victim was vulnerable, the Superior Court acted well within its discretion to impose sentences that exceeded the TIS guidelines.

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

⁸ Del. Code Ann. tit. 11, §§ 1102(b)(4); 4206(a) (2001).