

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY COOPER,	§
	§
Defendant Below-	§ No. 604, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN03-02-0136 and -0138
Plaintiff Below-	§ Cr. ID 0301018775
Appellee.	§

Submitted: May 17, 2004

Decided: June 30, 2004

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

ORDER

This 30th day of June 2004, it appears to the Court that:

(1) On April 30, 2004, this Court entered an order in this matter affirming appellant Anthony Cooper's convictions and sentences.¹ In that order, we noted that Cooper had failed to respond to his attorney's brief, filed pursuant to Supreme Court Rule 26(c), with any issues for the Court to consider on appeal. After considering his counsel's brief, the State's position and the record below, we concluded that the appeal was devoid of any arguable issues.

(2) On May 3, 2003, Cooper's counsel filed a motion to amend the opening brief on appeal to include an issue raised by Cooper alleging that the

¹ *Cooper v. State*, Del. Supr., No. 604, 2003, Berger, J. (Apr. 30, 2004).

State had breached its plea agreement with him. We directed the State to respond to the substance of Cooper's contention. The State filed its response on May 17, 2004. Because this is Cooper's direct appeal, we will grant counsel's untimely motion to amend and will address the substance of Cooper's lone claim. Accordingly, the Court's order dated April 30, 2004 is hereby rescinded, and this order shall be substituted in lieu thereof.

(3) The record reflects that Cooper pled guilty in September 2003 to one count of first degree assault and one count of possession of a deadly weapon during the commission of a felony. The Superior Court sentenced him to fourteen years at Level V imprisonment, to be suspended after serving eight years for two years of probation. Cooper asserts that the State breached its plea agreement with him by making a recommendation at his sentencing.

(4) We find no merit to Cooper's contention. There is nothing in Cooper's written plea agreement regarding a sentencing recommendation. The plea agreement reflected that a presentence investigation would be ordered, and the judge informed Cooper during the guilty plea hearing that the sentencing recommendation would come from the presentence investigator. According to the terms of the plea agreement, the State was neither required to make nor prohibited from making a recommendation as to sentencing. The transcript of

the sentencing hearing reflects that the State recommended a twenty-five year sentence. The judge, however, imposed a fourteen year sentence, suspended after serving eight years. Thus, the State's recommendation did not cause any prejudice to Cooper.

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

NOW, THEREFORE, IT IS ORDERED that the Court's April 30, 2004 order is hereby RESCINDED, and this order shall be substituted in lieu thereof. 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/ Carolyn Berger
Justice

**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).