

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD R. GREGORY,	§	
	§	No. 450, 2004
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County, in
	§	VS95-06-0221.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9506008099

Submitted: February 10, 2005

Decided: March 9, 2005

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

ORDER

This 9th day of March 2005, 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) On November 28, 1995, the appellant, Donald R. Gregory, pleaded guilty to Assault in the Second Degree and was sentenced to five years at Level V supervision, suspended after two years for one year at Level III, followed by two years at Level II. In May 1998, Gregory pleaded guilty to Robbery in the Second Degree and Theft and was sentenced to a

total of five years at Level V, suspended upon successful completion of the Key Program, for one year at Level IV followed by two years of probation.¹

(2) After a contested VOP hearing on September 23, 2004, the Superior Court found Gregory guilty of VOP on the 1995 assault conviction.² The Superior Court sentenced Gregory to one year and five months at Level V, suspended after one year for one year at Level IV work release, followed by one year at Level III. This is Gregory's appeal.

(3) Gregory's counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c). Gregory's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Counsel states that she delivered to Gregory by certified mail copies of the motion to withdraw, and Rule 26(c) brief and appendix in draft form, and a copy of the complete trial transcript. Counsel also delivered a letter explaining to Gregory that he could reply in writing to her within thirty days concerning any points he wished to raise on appeal. Gregory did not respond to his counsel. The State has responded to the

¹ *State v. Gregory*, Cr. ID Nos. 9802000985, 9802008794, Lee, J. (May 5, 1998).

²This is Gregory's fourth VOP conviction on the 1995 assault conviction. *State v. Gregory*, Cr. ID No. 9506008099, Stokes, J. (Dec. 3, 2003); *State v. Gregory*, Cr. ID No. 9506008099, Stokes, J. (April 4, 2003); *State v. Gregory*, Cr. ID No. 9506008099, Stokes, J. (Jan. 17, 2003).

position taken by Gregory's counsel and has moved to affirm the Superior Court's decision.

(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, the Court must be satisfied that defense counsel made a conscientious examination of the record and the law for arguable claims.³ 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.⁴

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

³ *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).

⁴ *Id.*

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