

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASON D. GREATHOUSE,	§	
	§	
Defendant Below,	§	No. 571, 2001
Appellant,	§	
	§	Court Below–Superior Court
v.	§	of the State of Delaware, in
	§	for Sussex County in VS00-
STATE OF DELAWARE,	§	12-0201, 0204, 0206; VS01-
	§	03-0673.
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0010021242

Submitted: March 15, 2002

Decided: May 10, 2002

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

ORDER

This 10th day of May 2002, 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) After a two-day contested violation of probation (VOP) hearing, the Superior Court found the appellant, Jason D. Greathouse, guilty of VOP

for having broken a “Cardinal Rule” of the Crest Program.¹ The Superior Court sentenced Greathouse,² and this appeal followed.

(2) Greathouse’s counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). Greathouse’s counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. Counsel states that he advised Greathouse of the provisions of Rule 26(c), informed Greathouse that he could supplement the Rule 26(c) brief, and provided him with a copy of the motion to withdraw, the accompanying brief, and the complete hearing transcript. Greathouse responded with a submission that raises three issues for this Court’s consideration. The State has responded to the position taken by Greathouse’s counsel as well as to the issues raised by Greathouse and has moved to affirm the Superior Court’s order.

¹The four Cardinal Rules of the Crest Program are: (i) no possession of or use of illicit drugs; (ii) no physical violence or threats of physical violence in any form; (iii) no sexual misconduct; and (iv) no stealing. State Ex. 1.

²The Superior Court sentenced Greathouse to a total of seven years and 30 days at Level V imprisonment, suspended upon successful completion of the Key Program, for one year at a Level IV Residential Substance Abuse Treatment Program (RSATP), suspended upon successful completion of the RSATP, for two years of Level III Aftercare, followed by two and one-half years of Level II probation.

(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. First, 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. Second, 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.³

(4) Greathouse was alleged to have violated his probation when he engaged in physical violence or threatened physical violence toward another inmate in the Crest Program. The incident happened in the bathroom of the Central VOP Center housing unit between ten and eleven o'clock in the evening on September 12, 2001. There were no eyewitnesses to the incident except for Greathouse and the alleged victim, Matthew Foth.

(5) Both Foth and Greathouse wrote statements shortly after the incident on September 12. Each accused the other of initiating a fight. The following day Michael Records, Greathouse's probation supervisor,

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).

interviewed first Foth and then Greathouse. Records also interviewed, and took written statements from, three other inmates who were in the program the evening of September 12, 2001.

(6) At the VOP hearing, Records testified that Foth told him that Greathouse had followed him into the bathroom and attacked him by punching and kicking him. Records testified that, at the time of the interview, he observed some minor swelling and abrasions on Foth's face.

(7) On the stand, Foth denied the attack, testifying instead that he injured his face when he fell on a wet floor in the bathroom.⁴ The State, however, introduced into evidence Foth's prior written statement, in which Foth claimed that Greathouse had hit him, knocked him over, and kicked him "over and over" until he was "spitting up blood."⁵

(8) Another inmate, Ryan Marioni, testified that he heard Greathouse and Foth arguing in the bathroom. According to Marioni, when he entered the bathroom he saw that Foth was down on the floor, and Greathouse was

⁴According to Foth, the incident was a "misunderstanding" and occurred because he was stressed due to health problems, and because Greathouse was pressuring him in Greathouse's role as a program "expeditor," *i.e.*, someone who addresses "attitudes and behaviors" of other Crest Program "family members." VOP Hr'g Tr., Oct. 12, 2001, at A-11. *See also* Def. Ex. 1.

⁵State Ex. 2.

standing in the shower. Marioni testified that Greathouse had “emotions that he could not control,” but that he did not threaten people.⁶ Records, on the other hand, testified that Marioni told him in an interview that Greathouse had, earlier in the evening of September 12, 2001, made “comments of a sexual nature which could have been threatening towards Mr. Foth.”⁷ Moreover, according to Records, Marioni said that upon entering the bathroom, he and another inmate, Kenny Leonard, separated Foth and Greathouse, and that he pulled Foth, who was on the ground, out from under Greathouse, who was “standing close, if not over [Foth].”⁸

(9) Kenny Leonard testified that he entered the bathroom after he heard yelling and found Greathouse walking around and Foth on the floor. Leonard testified that he did not recall any threats or derogatory comments made by Greathouse to him or to anyone else. In his prior written statement that was admitted into evidence at the hearing, however, Leonard described breaking up a fight between Greathouse and Foth, stating that “fists had been

⁶VOP Hr’g Tr., Oct. 12, 2001, at A-23.

⁷*Id.* at A-30.

⁸*Id.*

thrown, because [Foth] had blood on his lips and his face was red.”⁹ Moreover, Records testified that Leonard told him in an interview that Greathouse had made threats of a sexual nature toward Foth, and that Greathouse had physically threatened Leonard in the past.

(10) Greathouse testified that he was in the bathroom when he heard someone yelling and saw Foth approaching him with an object in his hand. According to Greathouse, he moved to the side and gave Foth a slight push on the back; Foth continued running past him and fell to the floor. Greathouse admitted slightly touching Foth, but he denied attacking him.

(11) On appeal, Greathouse claims that the Superior Court’s finding of VOP was the result of false or contradictory testimony and statements. Second, Greathouse claims that there was no evidence, other than false statements, that he was involved in an altercation with Foth.¹⁰ Third, Greathouse claims that he received ineffective assistance of counsel.

(12) Greathouse’s claims of insufficient and conflicting evidence are without merit. The Superior Court, as the trier of fact, was responsible for

⁹State Ex. 3

¹⁰The record reflects that Greathouse’s defense counsel made a similar argument, without success, in a motion for judgment of acquittal at the close of the State’s case.

determining witness credibility and resolving any conflicts in the testimony.¹¹

We have reviewed the VOP hearing transcript and conclude that there was sufficient evidence to support the Superior Court's finding that Greathouse violated a "Cardinal Rule of the Crest Program and thus violated probation.

(13) Although Greathouse claims that his defense counsel provided ineffective assistance of counsel, this Court will not consider on appeal any claim of ineffective assistance of counsel that was not raised in the trial court.¹² Greathouse's claim of ineffective assistance of counsel was not raised in the Superior Court. Accordingly, we will not consider Greathouse's claim for the first time in this appeal.

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

¹¹*Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

¹²*Wing v. State*, 690 A.2d 921, 923 (Del. 1996).

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/ E. Norman Veasey
Chief Justice