

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SEKOU DAVIS,	§
	§
Defendant Below-	§ No. 448, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN99-07-0416
Plaintiff Below-	§
Appellee.	§

Submitted: May 21, 2002

Decided: July 9, 2002

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

ORDER

This 9th day of July 2002, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Sekou Davis, was indicted in 1999 for numerous drug charges including possession with intent to deliver. The day after the Superior Court denied Davis's motion to suppress, Davis pled guilty to one count of possession of marijuana. In return for Davis's plea agreement, the State nolle prossed five other criminal charges. Following a guilty plea hearing, at which Davis was permitted to address the court at length, the Superior Court sentenced Davis, in accordance with the State's

recommendation, to six years at Level V incarceration suspended after two and a half years for decreasing levels of supervision. This is Davis's direct appeal.

(2) Davis's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Davis's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Davis's attorney informed him of the provisions of Rule 26(c) and provided Davis with a copy of the motion to withdraw and the accompanying brief. Davis also was informed of his right to supplement his attorney's presentation. Davis has raised several issues for this Court's consideration. The State has responded Davis's points, as well as the position taken by Davis's counsel, and has moved to affirm the Superior Court's judgment.

(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: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) 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.¹

(4) Although it is not entirely clear, it appears that Davis has two primary complaints about his guilty plea and sentence. First, Davis complains about his counsel's performance. Second, Davis argues that certain conditions attached to his sentence rendered his sentence contradictory and uncertain and, thus, illegal.

(5) With respect to Davis's first complaint regarding trial counsel's performance, it is settled law that claims of ineffective assistance of counsel will not be considered for the first time on direct appeal.² Accordingly, we will not review this claim in the first instance.

(6) Davis next claims that certain conditions attached to his sentence were contradictory and thus rendered his sentence illegal. Davis appears to assert that it was illegal for the Superior Court to order him: (i) to be evaluated for drug treatment; (ii) to have no drugs during the period of sentence; and (iii) to be assigned to an out-patient drug program. Davis does not elaborate further on the nature of the alleged inconsistency. This Court's

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).

² *Duross v. State*, 494 A.2d 1265, 1267-68 (Del. 1985).

review of a sentence generally is limited to a determination of whether the sentence is within the statutory limits.³ Davis's sentence in this case clearly was within statutory limits. Although Davis contends that his sentence was the product of demonstrably false information, he offers no support for his contention, and we find no support for this vague allegation in the record. Consequently, this claim is denied.

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

³ *Mayes v. State*, 604 A.2d 839, 845-46 (Del. 1992).