IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID L. MAYFIELD,	§	
	§	
Defendant Below-Appellant,	§	No. 602, 2002
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. ID 30209462DI
Plaintiff Below-Appellee.	§	
	§	

Submitted: February 26, 2003
Decided: March 28, 2003

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

O R D E R

This 28th day of March 2003, 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, David Mayfield, was found guilty of violating a previously imposed probationary sentence. The Superior Court sentenced Mayfield on October 1, 2002 to six years at Level V incarceration, suspended after serving three years for three years at decreasing levels of supervision. This is Mayfield's direct appeal.

(2) Mayfield's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Mayfield's counsel asserts that, based

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

(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) The record in this case reflects that Mayfield pled guilty to one count of third degree unlawful sexual intercourse and one count of sexual harassment in January 1996. The Superior Court sentenced Mayfield to a

[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).

total of eight years at Level V imprisonment, suspended entirely for eight years at Level IV home confinement, suspended after serving nine months for seven years and three months at Level III probation. The Superior Court found Mayfield guilty of violating his probation in 1999 and 2001. In October 2002, the Superior Court held a third VOP hearing. Mayfield appeared at the hearing represented by counsel. Mayfield acknowledged that he had given his probation officer several "dirty urines," i.e. had tested positive for cocaine use. He also acknowledged that he stopped reporting to his probation officer. He asserted that he had to stop going to the probation office and to the Crest Aftercare Program because they were located in a drug-infested area, and he "started getting the urges to use." Mayfield asked the court to permit him to continue his probation and his follow-up treatment program with SODAT instead of Crest Aftercare.

(5) Mayfield's counsel on appeal has represented that there are no arguable issues to support Mayfield's appeal. In response, Mayfield wrote several letters to his counsel contending: (a) his probation officer was prejudiced against him and testified falsely against him at the VOP hearing; (b) a different judge should have presided at the VOP hearing; and (c) his VOP sentence was too harsh. We find no merit to any of these contentions.

(6) The gist of Mayfield's complaints is that his probation officer gave inconsistent testimony and that the Superior Court's finding of a probation violation was the result of this untrustworthy testimony. Even assuming without deciding that the probation officer's testimony contained inconsistencies, those inconsistencies were for the Superior Court, as the fact finder, to resolve in its discretion.[2] We find no abuse of the Superior Court's discretion. The Superior Court's finding of a probation violation is amply supported by the record given Mayfield's own admissions regarding his "dirty" urine samples and his failure to report as required.

(7) Mayfield next complains that his third VOP hearing should have been heard by the same judge who presided over his first two VOP hearings. There is no merit to this contention. A probationer is entitled to a "prompt hearing before a judge of the Superior Court on the charge of violation."[3] A probationer is not entitled to a hearing before a specific judge.

(8) Finally, Mayfield complains about the length of his sentence. After finding Mayfield in violation of his probation, the Superior Court was authorized to reimpose any portion of his previously suspended prison term,

[2] *See Pryor v. State*, 453 A.2d 98, 100 (Del. 1982).

[3] DEL. SUPER. CT. CRIM. R. 32.1(a) (2003).

giving credit for all time previously served on the sentence at Level V incarceration.[4] Mayfield does not contend that his VOP sentence exceeded either the statutory limits or his original sentence. Accordingly, we find no merit to Mayfield's contention that the Superior Court sentenced him too harshly.[5]

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

[4] *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

[5] *See Williams v. State*, 560 A.2d 1012, 1015 (Del.1989) (holding that trial court has "wide latitude in probationary matters").