

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIE BROTHERS,	§
	§
Defendant Below-	§ No. 193, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. VN97-06-0733-02
Plaintiff Below-	§
Appellee.	§

Submitted: August 7, 2002

Decided: September 24, 2002

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

ORDER

This 24th day of September 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) On March 20, 2002, the defendant-appellant, Willie Brothers, was found by the Superior Court to be in violation of probation ("VOP").¹ He was sentenced to 7 years, 10 months incarceration at Level V, to be suspended after 2

¹The Superior Court also heard Brothers' motion to suppress in connection with his new criminal charges at the time of his VOP hearing. Brothers was represented by counsel in both matters.

years, 10 months for decreasing levels of probation. This is Brothers' direct appeal.

(2) Brothers' trial counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). 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) 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; and (b) 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.²

(3) Brothers' counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Brothers' counsel informed Brothers of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete hearing transcript. Brothers was also informed of his right to

²*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).

supplement his attorney's presentation. Brothers responded with a brief that raises two issues for this Court's consideration. The State has responded to the position taken by Brothers' counsel as well as the issue raised by Brothers and has moved to affirm the Superior Court's judgment.

(4) Brothers raises two claims for this Court's consideration. He claims that: a) the Superior Court erred in denying his motion to suppress; and b) his due process rights were denied at his VOP hearing because he was not given a copy of the probation officer's reports.

(5) Brothers can not prevail on either of his claims. The record reflects that the motion to suppress was heard by the Superior Court at the time of the VOP hearing as a matter of convenience. Because the criminal charges giving rise to the motion to suppress have not yet been disposed of, the denial of the motion to suppress was an interlocutory order of the Superior Court and, as such, this Court is without jurisdiction to review it.³ In addition, Brothers admitted at the VOP hearing that he had violated his probation. Thus, even if Brothers was not provided a copy of the probation officer's reports, as he alleges,

³DEL. CONST. art. IV, § 11(1) (b); *State v. Cooley*, 430 A.2d 789, 791 (Del. 1981).

any such error was harmless in view of that admission.⁴ There was clearly sufficient evidence for the Superior Court's finding of a VOP⁵ and no evidence of a due process violation.⁶

(6) This Court has reviewed the record carefully and has concluded that Brothers' appeal is wholly without merit and devoid of any arguably appealable issue. We are also satisfied that Brothers' counsel has made a conscientious effort to examine the record and has properly determined that Brothers 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/ E. Norman Veasey
Chief Justice

⁴*Sewell v. State*, Del. Supr., No. 635, 2001, Walsh, J. (Apr. 17, 2002).

⁵*Id.*

⁶SUPER. CT. CRIM. R. 32.1.