

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRELL S. MOBLEY,	§
	§ No. 585, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. No. IN05-03-1485
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 12, 2006

Decided: July 10, 2006

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

ORDER

This 10th day of July 2006, 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) The defendant-appellant, Terrell S. Mobley, pleaded guilty to Burglary in the Second Degree and admitted to being a habitual offender.¹ He was sentenced to 8 years of Level V incarceration. This is Mobley’s direct appeal.

(2) Mobley’s counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the

¹ Del. Code Ann. tit. 11, § 4214(a).

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

(4) Mobley raises two issues for this Court's consideration. He claims that: a) his trial counsel had a conflict of interest; and b) he was never

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).

notified that a Superior Court grand jury could indict him after his charges were dismissed by the Court of Common Pleas at the preliminary hearing stage.

(5) This Court will not entertain an ineffective assistance of counsel claim for the first time on direct appeal.³ Because Mobley's claim was not presented to the Superior Court in the first instance, we decline to decide it in this direct appeal.

(6) Mobley's second claim is that he was never notified that he could be indicted by the grand jury even if the charges against him had been dismissed by the Court of Common Pleas at the preliminary hearing stage. Mobley pleaded guilty to the burglary charge. Moreover, the transcript of Mobley's plea colloquy reflects that his guilty plea was knowing and voluntary. Because a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea,⁴ we conclude that this claim is without merit.⁵

(7) This Court has reviewed the record carefully and has concluded that Mobley's appeal is wholly without merit and devoid of any arguably

³ *Wing v. State*, 690 A.2d 921, 923 (Del. 1996).

⁴ *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

⁵ Superior Court Criminal Rule 5.1(b) specifically permits the State to institute a prosecution if the defendant is discharged by the Court of Common Pleas at the preliminary hearing stage.

appealable issue. We also are satisfied that Mobley's counsel has made a conscientious effort to examine the record and has properly determined that Mobley 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