

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE NORWOOD,	§
	§ No. 618, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0405006248
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 5, 2006

Decided: August 1, 2006

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

ORDER

This 1st day of August 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) In September 2005, the defendant-appellant, Tyrone Norwood, pleaded guilty to Murder in the Second Degree as a lesser-included offense of Murder in the First Degree, Possession of a Firearm During the Commission of a Felony and Possession of a Deadly Weapon by a Person Prohibited. On the murder conviction, Norwood was sentenced to 35 years of Level V incarceration, to be suspended after 25 years for probation. On the first weapon conviction, he was sentenced to 10 years of Level V

incarceration. On the second weapon conviction, he was sentenced to 4 years of Level V incarceration, to be suspended after 2 years for probation.¹ This is Norwood's direct appeal.

(2) Norwood'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 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) Norwood's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Norwood's counsel informed Norwood 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. Norwood also was informed of his right to supplement his attorney's presentation. Norwood

¹ On May 18, 2006, the Superior Court modified Norwood's sentence to provide a substance abuse evaluation by TASC and participation in the Greentree program. The rest of Norwood's sentence remained the same.

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).

responded with a brief that raises five issues for this Court's consideration. The State has responded to the position taken by Norwood's counsel as well as the issues raised by Norwood and has moved to affirm the Superior Court's judgment.

(4) Norwood raises five issues for this Court's consideration. He claims that the Superior Court erred and abused its discretion during sentencing by: a) exhibiting a closed mind; b) failing to consider the presentence report; c) denying him access to the presentence report; d) failing to afford him a chance to rebut the presentence report; and e) failing to articulate the aggravating circumstances that justified departing from the sentencing guidelines.

(5) Norwood's first claim is that the sentencing judge exhibited a closed mind when imposing sentence. When there is no claim that a sentence exceeds the statutory limits, this Court considers only whether the sentence is based on a false factual predicate, is impermissible, lacks minimal reliability, or exhibits judicial vindictiveness, bias or a closed mind.³ A judge imposes a sentence with a closed mind when the sentence is

³ *Weston v. State*, 832 A.2d 742, 746 (Del. 2003).

based on a preconceived bias without consideration of the nature of the offense or the character of the defendant.⁴

(6) We have carefully reviewed the sentencing transcript in this case. It reflects that defense counsel was afforded an extended period of time to present Norwood's position on sentencing, Norwood himself was permitted to speak on his own behalf and the judge carefully weighed the nature of the offense, the character of the defendant, and the aggravating and mitigating factors in the case. There is nothing in the record that supports the conclusion that the judge had a preconceived bias. We, therefore, find Norwood's first claim to be without merit.

(7) Norwood's next three claims involve the sentencing judge's use of the presentence report. Norwood argues that the judge failed to consider the presentence report, denied him access to the presentence report, and denied him an opportunity to rebut the presentence report. The record does not support Norwood's claim that the judge did not consider the presentence report. Before imposing sentence, the judge said that he did not consider the presentence officer's evaluation of the file, but instead relied upon his own evaluation. We find that the judge properly relied upon his own judgment in evaluating the report. Norwood's arguments that he was denied access to

⁴ Id.

the presentence report and denied an opportunity to rebut the presentence report also are not supported by the record. The sentencing transcript reflects that Norwood's counsel had reviewed the report prior to making his arguments to the judge. We, therefore, find Norwood's claims regarding the presentence report to be without merit.

(8) Norwood's last claim is that the sentencing judge failed to articulate the grounds for departing from the sentencing guidelines. This claim is without factual support. The sentencing transcript reflects that the judge articulated three aggravating factors---a prior criminal history, a prior involvement with weapons and being intoxicated during the commission of the crime. We, therefore, find Norwood's final claim to be without merit.

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