

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE W. GIBBS,	§	
	§	No. 357, 2002
Defendant Below,	§	
Appellant,	§	Court Below -- Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in Cr.
	§	ID 0203014294.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 26, 2002  
Decided: November 19, 2002

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

**ORDER**

This 19th day of November 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) In June 2002, Tyrone Gibbs pleaded guilty to Delivery of Cocaine, Resisting Arrest and Criminal Trespass in the Third Degree. For the Delivery of Cocaine offense, the Superior Court sentenced Gibbs to the Boot Camp Diversion Program for a period of six months followed, upon successful completion of the Boot Camp Program, by two years and six months at Level III with Boot Camp Aftercare. For Resisting Arrest, the Superior Court sentenced Gibbs to one year at Level V, suspended and

discharged. For Criminal Trespass, the Superior Court imposed a \$50 fine. This is Gibbs' direct appeal.

(2) Gibbs' counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c). Gibbs' counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Gibbs' attorney informed him of the provisions of Rule 26(c) and provided Gibbs with a copy of the motion to withdraw and the accompanying brief. Gibbs also was informed of his right to supplement his attorney's presentation. Gibbs has raised two issues for this Court's consideration. The State has responded to Gibbs' points, as well as to the position taken by Gibbs' 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. First, this Court must be satisfied that defense counsel has made a conscientious examination of the record and law for arguable claims.<sup>1</sup> Second, this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least

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<sup>1</sup> *Person v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 428, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

arguably appealable issues that it can be decided without an adversary presentation.<sup>2</sup>

(4) First, Gibbs alleges that he received ineffective assistance of counsel. Second, Gibbs complains that his probationary sentence is too severe. He requests that his probation be terminated after he completes Boot Camp and Aftercare.

(5) It is settled law that this Court will not consider a claim of ineffective assistance of counsel for the first time on direct appeal.<sup>3</sup> Accordingly, we will not review Gibbs' ineffective assistance of counsel claim in this appeal.

(6) Gibbs' complaint about his sentence is unavailing. Gibbs' dissatisfaction with his sentence notwithstanding, the two and one-half years probationary sentence imposed by the Superior Court was required

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<sup>2</sup> *Id.*

<sup>3</sup> *Duross v. State*, 494 A.2d 1265, 1267-68 (Del. 1985).

by title 11, section 6712(d)(1) of the Delaware Code.<sup>4</sup>

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

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<sup>4</sup> See Del. Code Ann. tit. 11, § 6712(d)(1) (2001) (providing that Boot Camp Diversion Program shall include placement in a boot camp facility with a substance abuse treatment program for a period of not less than 6 months, followed by supervision at Level IV or III, or both, for a period of not less than 2 and one-half years).