

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRYCIE HARRIS,	§
	§
Defendant Below-	§ No. 302, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0601019334
Plaintiff Below-	§
Appellee.	§

Submitted: October 3, 2006
Decided: December 5, 2006

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

ORDER

This 5th day of December 2006, 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, Brycie Harris (Harris), pled guilty on May 10, 2006 to one count of Assault in the Second Degree. The Superior Court sentenced Harris to eight years at Level V imprisonment, suspended immediately for time served and probation. A special condition of his probation was to have no contact with the victim. On May 12, 2006, a probation officer went to the victim's home to inform her Harris had been released from prison. Harris was in the victim's home. He was taken into

custody, and a violation of probation (VOP) hearing was held on May 26, 2006. The Superior Court sentenced Harris on the VOP to eight years at Level V imprisonment, to be suspended after serving two years for one-year probation. This is Harris's direct appeal from those proceedings.

(2) Harris's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Harris's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Harris's attorney informed him of the provisions of Rule 26(c) and provided Harris with a copy of the motion to withdraw and the accompanying brief. Harris also was informed of his right to supplement his attorney's presentation. Harris has raised several issues for this Court's consideration. The State has responded to the position taken by Harris's counsel, as well as the arguments raised by Harris, 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: (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) Harris raises several points on appeal. First, he alleges numerous violations of his procedural rights under Superior Court Criminal Rule 32.1. Second, he asserts that there was insufficient proof to find him in violation for failing to report to the probation office because less than twelve hours had passed from the time he was released from prison to the time he was arrested for violating probation. Third, he claims that, because he had not yet “signed up” at the probation office, the probation office did not have jurisdiction over him and he could not be in violation of probation that he had yet to begin serving. Finally, Harris argues that his counsel at the VOP hearing was ineffective.

(5) With respect to his procedural rights, Harris asserts that: (i) he was never notified in writing of the allegations against him; (ii) the State did not disclose the evidence against him; (iii) he was not given the opportunity to present evidence or call witnesses; (iv) he was not allowed to question adverse witnesses; (v) he was not brought before a magistrate to have bail set; and (vi) he was not informed of his right to counsel at the VOP

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).

proceedings. Harris did not present any of these objections to the Superior Court. Accordingly, we review for plain error.²

(6) We find no basis in the record for Harris' claim that the VOP hearing did not comply with the procedural requirements of Rule 32.1. As required by Rule 32.1, there was written notice of the allegations in the violation report and Harris was aware of the evidence against him sufficiently in advance of the hearing to respond to the allegations. Moreover, Harris had the opportunity to appear through legal counsel, to confront the witness against him, and to present evidence in his own behalf. It was defense counsel's choice not to cross-examine or present other evidence. Accordingly, we find no plain error in the conduct of the VOP proceedings.

(7) Furthermore, we reject Harris's claims that the evidence was insufficient to establish a violation of either the conditions of his probation for which he was found guilty. The transcript of Harris's guilty plea to the assault charge on May 10, 2006 reflects that Harris specifically questioned the judge about imposing the no contact order with the victim, whom Harris described as his "legal wife" and with whom Harris stated he wished to reunite. The sentencing judge explained to Harris unequivocally that,

² Del. Supr. Ct. R. 8 (2006).

regardless of the victim's purported desire to reunite with him,³ Harris was not to have contact with the victim for a period of two years. Consequently, the record clearly establishes that Harris knew about the no-contact order. Had Harris reported to the probation office on May 12, 2006 instead of going to the victim's house, he could have avoided violating either condition of his probation. Under other circumstances, a short delay in reporting to the probation office may not result in a technical violation for failing to report "immediately." Under the circumstances of this case, however, Harris had the choice to report the probation office. Instead, he chose to go to the victim's house, in clear violation of a condition of his release on probation. We find sufficient evidence in the record to support the Superior Court's VOP adjudication in this case.

(8) With respect to Harris's final claim regarding his counsel's deficient performance, it is well-established that this Court will not consider ineffectiveness claims for the first time on direct appeal.⁴

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

³ The victim did not appear at Harris's guilty plea and sentencing or at the VOP proceedings.

⁴ *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

conscientious effort to examine the record and the law and has properly determined that Harris 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