

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNARD LANE,	§
	§
Defendant Below-	§ No. 279, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID Nos. 0510017058 and
Plaintiff Below-	§ 0601019849
Appellee.	§

Submitted: October 17, 2006
Decided: December 18, 2006

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

ORDER

This 18th 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, Kennard Lane (Lane), entered two separate guilty pleas on January 24, 2006 and February 6, 2006, respectively, on two counts of Rape in the First Degree. The victims were Lane's minor daughters. Lane was scheduled to be sentenced on both charges on March 15, 2006. At sentencing, Lane informed the Superior Court that he wished to withdraw his guilty pleas. The Superior Court appointed conflicted counsel to assist Lane in pursuing his motion to

withdraw. On May 18, 2006, the Superior Court denied the motion to withdraw Lane's guilty pleas. Thereafter, the Superior Court sentenced Lane to a total period of eighty years at Level V incarceration, to be suspended after serving forty years for probation. This is Lane's direct appeal.

(2) Lane's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Lane's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Lane's attorney informed him of the provisions of Rule 26(c) and provided Lane with a copy of the motion to withdraw and the accompanying brief. Lane also was informed of his right to supplement his attorney's presentation. Lane has raised several issues for the Court's consideration. The State has responded to the position taken by Lane's counsel, as well as the points asserted by Lane, 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) Although enumerated as six different claims, the gist of Lane’s argument on appeal is that his guilty plea was not entered knowingly, intelligently and voluntarily and that the Superior Court erred in refusing to let him withdraw his plea prior to sentencing. A motion to withdraw a guilty plea is addressed to the sound discretion of the trial court, and a denial of the motion is reviewable on appeal only for an abuse of discretion.²

(5) Superior Court Criminal Rule 32(d) provides that if a motion to withdraw a guilty plea is made before the imposition of sentence, the Superior Court may permit withdrawal of the plea for “any fair and just reason.”³ In determining whether a fair and just reason exists, the trial court will consider the following factors: (i) whether there was a procedural defect in taking the plea; (ii) whether the defendant knowingly and voluntarily consented to the plea agreement; (iii) whether the defendant has an adequate basis to assert his legal innocence; (iv) whether the defendant had adequate

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).

² *Blackwell v. State*, 736 A.2d 971, 972 (Del. 1999).

³ Super. Ct. Crim. R. 32(d).

legal counsel throughout the proceedings; and (v) whether granting the motion will prejudice the State or unduly inconvenience the trial court.⁴

(6) In this case, the record reflects that Lane requested to withdraw his guilty pleas at the consolidated sentencing hearing scheduled to occur on March 15, 2006. Rather than proceeding with the scheduled sentencing, the Superior Court appointed conflict counsel to assist Lane in pursuing his motion to withdraw his guilty pleas. Thereafter, on April 28, 2006, the Superior Court held a hearing on the motion to withdraw. At that hearing, Lane, through his conflict counsel, represented that the motion to withdraw was limited only to his second guilty plea. Lane testified at the hearing that he wanted to withdraw his second plea because he felt he had been “forced” into entering the plea and because, based on conversations with other inmates, he believed he should have been offered a better deal. The Superior Court denied Lane’s motion in a written opinion dated May 18, 2006.

(7) In its opinion, the Superior Court noted that there was no allegation of a procedural defect in the taking of Lane’s plea. With respect to the voluntariness of the plea, the Superior Court noted that, during the plea colloquy, Lane indicated his understanding of the terms of the plea agreement, including the possible sentence he faced. Lane also stated that

⁴ *Patterson v. State*, 684 A.2d 1234, 1238 (Del. 1996).

no one had forced him or threatened him into entering the plea or promised him anything in return for his plea and that he was entering the plea because, in fact, he was guilty of the charged offense.⁵ Lane also indicated his satisfaction with his counsel's representation of him throughout the proceedings. Based on his representations, the Superior Court concluded that Lane's plea was entered knowingly, intelligently, and voluntarily and that Lane's counsel had provided adequate representation. Moreover, because Lane's own testimony reflected that his real motivation for seeking to withdraw his plea was based on his perception that the State had offered better plea bargains to other, similarly-charged defendants, the Court concluded that Lane had not established a "fair and just" reason to permit withdrawal of the plea.

(8) We have reviewed the record carefully and find no abuse of discretion in the Superior Court's denial of Lane's motion to withdraw. There is nothing in the record to support Lane's contention that his guilty plea was not entered knowingly, intelligently, or voluntarily. In the absence of clear and convincing evidence to the contrary, Lane is bound by the answers he provided under oath during his guilty plea colloquy.⁶

⁵ Lane previously had confessed to raping both of his daughters.

⁶ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

(9) Our review of the record reveals that Lane's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Lane's counsel has made a conscientious effort to examine the record and the law and has properly determined that Lane 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