

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY B. WEAVER,	§
	§ No. 5, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below-Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0501015369
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 29, 2007

Decided: July 18, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 18th day of July 2007, 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, Gregory B. Weaver, pleaded guilty to Possession of Cocaine and Possession of Drug Paraphernalia. He was sentenced to Level IV Crest and probation. Upon completing the Crest program, Weaver was discharged from his probationary sentence in connection with his cocaine possession conviction. Weaver subsequently was found to have committed a violation of probation ("VOP") in connection with his sentence for possession of drug paraphernalia. At a

VOP hearing, Weaver admitted the VOP. This is Weaver's direct appeal of his VOP conviction and sentence.

(2) Weaver'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 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.¹

(3) Weaver's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Weaver's counsel informed Weaver 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. Weaver also was informed of his right to supplement his attorney's presentation. Weaver responded with a brief that raises three issues for this Court's consideration. The State has responded to the position taken by Weaver's counsel as well

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).

as the issues raised by Weaver and has moved to affirm the Superior Court's judgment.

(4) Weaver raises three issues for this Court's consideration. He claims that a) he is a depressive and was not given the appropriate medication when he was released from Level V to probation; b) his hepatitis C was not properly treated while he was at Level V and, therefore, he should not be on probation; and c) he should be discharged from probation because it is not helping him re-adjust to society.

(5) The transcript of the VOP hearing reflects the following. Weaver was represented by counsel. Weaver's counsel informed the Superior Court judge at the beginning of the hearing that, while Weaver denied that a bottle of liquor found in the refrigerator where he was living belonged to him, he admitted that he had committed a VOP by using cocaine. The judge noted that Weaver had committed multiple probation violations and sentenced him to fifteen months at Level V, to be suspended upon successful completion of the Tempo Program for nine months at Level III Aftercare. Weaver also was to continue mental health counseling and treatment.

(6) There is no basis for an appeal in this case. The VOP hearing transcript clearly reflects that Weaver admitted to committing a VOP. There

is no evidence that Weaver was subjected to any coercion, that his attorney was ineffective or that his sentence is illegal. Weaver's claims bear no relationship to the VOP hearing itself. To the extent that Weaver seeks a modification of his VOP sentence, that issue must be presented to the Superior Court in the first instance.

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