

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RANDALL W. JUNOD,	§
	§
Defendant Below-	§ No. 675, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for County
	§ Cr. ID 0403026366
Plaintiff Below-	§
Appellee.	§

Submitted: May 1, 2007
Decided: July 19, 2007

Before **BERGER, JACOBS,** and **RIDGELY,** Justices.

ORDER

This 19th day of July 2007, 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 December 2006, the Superior Court found the defendant-appellant, Randall Junod (Junod), in violation of the terms of his probation associated with a prior sentence for a fourth offense DUI. The VOP finding, which was his second violation, was the result of Junod being charged with escape after conviction when he failed to report back to the Sussex Work Release Unit after leaving on an approved work pass. The Superior Court sentenced Junod on the VOP to two years and three months at Level V

incarceration, to be suspended upon successful completion of the Key Program for one year at Level IV, to be suspended upon successful completion of residential drug treatment for one year at Level III probation. This is Junod's appeal from that sentence.

(2) Junod's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Junod's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Junod's attorney informed him of the provisions of Rule 26(c) and provided Junod with a copy of the motion to withdraw and the accompanying brief. Junod also was informed of his right to supplement his attorney's presentation. Junod has raised several issues for this Court's consideration. The State has responded to the position taken by Junod's counsel, as well as the issues raised by Junod, 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) Junod filed an eight-page handwritten document in response to his counsel's request for points Junod wanted to raise on appeal. While it is not entirely clear, it appears that Junod contends that his first violation of probation proceeding, which occurred in February 2006 and is not the subject of this appeal, was procedurally defective. Junod also appears to offer an explanation for why he committed the violation of probation that is the subject of this appeal. Finally, he challenges the sentence imposed because he contends there was no evidence that he needed drug treatment, and he asserts the sentence was excessive.

(5) The issues that Junod raises regarding his February 2006 VOP proceeding are not properly before the Court in this appeal. Junod filed an appeal to this Court from the February VOP but later dismissed that appeal voluntarily. He has waived any issues he may have had regarding that proceeding.

(6) Although Junod offers an explanation about why he failed to report back to the Work Release Center on November 8, 2006 in accordance

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).

with his work pass, Junod does not deny that he absconded from supervision and was not apprehended until November 15. Nor does Junod deny that he pled guilty in the Court of Common Pleas to a charge of escape, which led to the violation of probation charge. Under these circumstances, we find no abuse of discretion in the Superior Court's finding that Junod had violated the terms of his probation by committing a new criminal charge.²

(7) Moreover, once the violation was established, the Superior Court was entitled to revoke Junod's previously-imposed probation and to reimpose the unexecuted portion of Junod's Level V sentence.³ Junod provides no evidence that the Superior Court's sentence did not properly credit Junod for all the time that he previously served at Level V on his original DUI sentence. Furthermore, any departure from the SENTAC guidelines provides no basis for appeal.⁴

(8) This Court has reviewed the record carefully and has concluded that Junod's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Junod's counsel has made a conscientious effort to examine the record and the law and has properly determined that Junod could not raise a meritorious claim in this appeal.

² *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

³ 11 Del. C. § 4334(c) (Supp. 2006).

⁴ *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).

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/ Jack B. Jacobs
Justice