

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICKY MARINE,	§
	§ No. 88, 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. 0503001237
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 6, 2007  
Decided: July 24, 2007

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

**ORDER**

This 24<sup>th</sup> 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, Ricky Marine, pleaded no contest to one count of Continuous Sexual Abuse of a Child and two counts of Rape in the Fourth Degree. On the conviction of continuous sexual abuse of a child, he was sentenced to 20 years at Level V, to be suspended after 15 years for 6 months at Level IV work release and 3 years at Level III probation. On each of the two rape convictions, he was sentenced to 5 years at Level V, to be

suspended after 2 years for 3 years at Level III probation. This is Marine's direct appeal of his sentences.

(2) Marine's trial 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 pursuant to 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 could arguably 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.<sup>1</sup>

(3) Marine's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Marine's counsel informed Marine of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete transcript. Marine also was informed of his right to supplement his attorney's presentation. Marine responded with a brief that raises two issues for this Court's consideration. The State has responded to

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<sup>1</sup> *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).

the position taken by Marine's counsel as well as the issues raised by Marine and has moved to affirm the Superior Court's judgment.

(4) Marine raises two issues for this Court's consideration. He claims that: a) the Superior Court improperly considered his 1982 criminal convictions in imposing sentence; and b) his prison sentence exceeds the TIS guidelines and, therefore, is illegal.

(5) Marine's first claim is not supported by the record. At his 2006 sentencing hearing, the prosecutor raised the issue of Marine's previous record. The Superior Court ruled that, because the previous convictions were more than ten years old, they would not be considered for purposes of Marine's current sentence. There is nothing in the record to suggest that the Superior Court considered Marine's previous record and we, therefore, conclude that Marine's first claim is without merit.

(6) As for Marine's second claim, there is no constitutional or statutory right in Delaware to challenge a sentence solely on the ground that it exceeds the TIS guidelines.<sup>2</sup> Marine's sentences do not exceed the statutory maximum for any of his three convictions.<sup>3</sup> As such, we conclude that Marine's second claim also is without merit.

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<sup>2</sup> *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).

<sup>3</sup> Del. Code Ann. tit. 11, §§ 770, 778, and 4205(b) (2) and (3).

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