

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY JEFFERSON,	§	
	§	No. 1, 2007
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0604018844
Appellee.	§	0301014682

Submitted: June 11, 2007  
Decided: September 10, 2007

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

**ORDER**

This 10<sup>th</sup> day of September 2007, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26(c) (“Rule 26(c)”), his attorney’s motion to withdraw, and the State’s response, it appears to the Court that:

(1) On December 4, 2006, the defendant, Gary Jefferson, entered a plea of nolo contendere to a charge of Rape in the Third Degree. Jefferson also pleaded guilty to Criminal Solicitation in the First Degree and to a violation of probation (VOP) on an unrelated DUI charge. On the rape charge, Jefferson was sentenced to twenty-five years at Level V suspended after eight years for decreasing levels of supervision. On the criminal

solicitation charge, Jefferson was sentenced to five years at Level V suspended after one year for probation. On the VOP, Jefferson was sentenced to three years at Level V suspended for eighteen months of probation. This is Jefferson's direct appeal.

(2) Jefferson's counsel on appeal ("Counsel") has filed a brief and motion to withdraw pursuant to Rule 26(c).<sup>1</sup> Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues.

(3) When considering a brief filed pursuant to Rule 26(c), the Court must be satisfied that defense counsel made a conscientious examination of the record and the law for claims that could arguably support the appeal.<sup>2</sup> The Court must also 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>3</sup>

(4) Counsel represents that he informed Jefferson of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the Rule 26(c) brief and the appendix to the brief.<sup>4</sup> It appears that Counsel also

---

<sup>1</sup> Jefferson was represented by different counsel in the Superior Court.

<sup>2</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).

<sup>3</sup>*Id.*

<sup>4</sup> The appendix includes a transcript of the guilty plea hearing.

informed Jefferson of his right to respond to the motion to withdraw and to supplement the Rule 26(c) brief.

(5) Jefferson has submitted four issues for the Court's consideration.<sup>5</sup> Jefferson claims that (i) his trial counsel was ineffective; (ii) he pleaded guilty without fully understanding "the consequences or the circumstances of the plea"; (iii) there was insufficient evidence to convict him of the rape charge, and (iv) he was entrapped into committing criminal solicitation.

(6) It is well-settled that the Court does not consider a claim of ineffective assistance of counsel that is raised for the first time on direct appeal.<sup>6</sup> As a result, the Court will not consider Jefferson's claim that his trial counsel was ineffective.

(7) Jefferson's claim that he did not fully understand "the consequences or the circumstances of the plea" is belied by the representations that he made on the guilty plea form<sup>7</sup> and during the plea colloquy.<sup>8</sup> Jefferson's guilty plea also forecloses his attempt on appeal to

---

<sup>5</sup> Jefferson raised the issues in a written submission, a copy of which is included in the Rule 26(c) brief filed by Counsel on May 25, 2007, and in a nonconforming *pro se* "reply brief" that Jefferson filed on July 20, 2007.

<sup>6</sup> *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

<sup>7</sup> The Court did not locate the original guilty plea form in the record; however, a copy of the executed form is included in the appendix to the Rule 26(c) brief.

<sup>8</sup> Hr'g Tr. at 4-12 (Dec. 4, 2006).

challenge the sufficiency of the evidence on the rape charge<sup>9</sup> or to claim entrapment as a defense to the charge of criminal solicitation.<sup>10</sup>

(8) The Court has concluded that Jefferson's appeal is wholly without merit and devoid of any arguably appealable issue. Having carefully reviewed the record, we are satisfied that Counsel made a conscientious effort to examine the record and properly determined that Jefferson 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

---

<sup>9</sup> *Hartman v. State*, 2007 WL 38401 (Del. Supr.) (citing *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003)).

<sup>10</sup> *Wilson v. State*, 2001 WL 213376 (Del. Supr.) (citing *Smallwood v. State*, 1991 WL 134432 (Del. Supr.) (citing *United States v. Broce*, 488 U.S. 563, 568-70 (1989))).