

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY STANLEY,	§
	§
Defendant Below-	§ No. 364, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID Nos. 1101020723 and
Plaintiff Below-	§ 1106019686
Appellee.	§

Submitted: January 3, 2013

Decided: February 12, 2013

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

**ORDER**

This 12th day of February 2013, 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) On September 22, 2011, the defendant-appellant, Anthony Stanley, pled guilty to one count each of Reckless Endangering in the First Degree, Possession of a Firearm during the Commission of a Felony, and Possession of a Firearm by a Person Prohibited.<sup>1</sup> These charges stemmed from a January 2011 shooting at a bowling alley. On January 31, 2012, Stanley pled guilty to one count each of Assault in the First Degree,

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<sup>1</sup> DEL. CODE ANN. tit. 11, §§ 604, 1447A, 1448 (2007).

Possession of a Firearm During the Commission of a Felony, and Conspiracy in the Second Degree.<sup>2</sup> These charges stemmed from another shooting in the city of Wilmington. Sentencing in both cases occurred on June 8, 2012. The Superior Court sentenced Stanley to a total period of fifty-six years at Level V incarceration to be suspended after serving forty-nine years in prison for a period of probation.<sup>3</sup> This is Stanley's direct appeal.

(2) Stanley's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Stanley's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Stanley's attorney informed him of the provisions of Rule 26(c) and provided Stanley with a copy of the motion to withdraw and the accompanying brief. Stanley also was informed of his right to supplement his attorney's presentation. Stanley did not respond in writing with any points, however, he orally raised two points to his counsel, which were included in counsel's Rule 26(c) brief. The State has responded to Stanley's points, as well as to the position taken by Stanley's counsel, and has moved to affirm the Superior Court's judgment.

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<sup>2</sup> *Id.* §§ 512, 613(a)(1), 1447A.

<sup>3</sup> After Stanley filed this appeal, the Superior Court issued a corrected sentencing on December 5, 2012, which reduced Stanley's overall sentence to forty-nine years at Level V incarceration to be suspended after serving forty-seven years in prison.

(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.<sup>4</sup>

(4) Stanley first asserts that the Superior Court did not articulate any aggravating factors to justify imposing a sentence greater than the SENTAC sentencing guidelines. Stanley also argues that the State misrepresented his criminal record at sentencing. Specifically, Stanley argues that the State incorrectly informed the Superior Court that Stanley had previously been convicted of burglary and a firearm offense arising from the same incident, when in fact the convictions arose from two separate incidents.

(5) As a general rule, this Court's review of a sentence is limited to ascertaining whether the sentence is within the statutory limits.<sup>5</sup> While a defendant may challenge a sentence on the grounds that it is

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<sup>4</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>5</sup> *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).

unconstitutional, based on false or unreliable information, or the result of judicial bias, Delaware does not provide for appellate review of punishments simply because the punishment deviates from sentencing guidelines.<sup>6</sup> In this case, Stanley's corrected sentence was within the statutory range of authorized punishments. Moreover, to the extent the prosecutor incorrectly stated that two of Stanley's prior convictions arose from a single criminal incident (as opposed to two separate incidents), Stanley cannot establish any possible prejudice from this minor misstatement.<sup>7</sup> Under the circumstances, we find no error in the Superior Court's departure from the sentencing guidelines,<sup>8</sup> nor do we find any merit to Stanley's suggestion that his sentence is the result of false information.<sup>9</sup>

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

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<sup>6</sup> *Id.*

<sup>7</sup> *See Wynn v. State*, 23 A.3d 145, 149 (Del. 2011).

<sup>8</sup> *Siple v. State*, 701 A.2d at 83.

<sup>9</sup> *See Fink v. State*, 817 A.2d 781, 790 (Del. 2002).

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