

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JONATHAN KNIGHT,	§
	§ No. 557, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr.A. No. VK99-01-0503-07
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 24, 2006

Decided: June 28, 2006

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

ORDER

This 28th day of June 2006, 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, Jonathan Knight, was found by the Superior Court to have committed a violation of probation ("VOP") in connection with a previous sentence for Rape in the Fourth Degree.¹ He was sentenced on the VOP to six years of Level V incarceration, to be suspended

¹ The record reflects that this was Knight's seventh VOP in connection with that sentence.

after two years for decreasing levels of probation. This is Knight's direct appeal of the VOP.

(2) Knight'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.²

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

² *Person 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).

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

(4) The transcript of the VOP hearing reflects the following. Probation Officer Jill Green testified that, at about 8:00 p.m. on September 19, 2005, she observed Knight get into a white Ford Ranger at the State Service Center in Georgetown, Delaware, where Knight was attending a class for sex offenders. Knight's girlfriend was the driver and a minor child was sitting in the front seat of the vehicle. Knight, who was serving the probationary portion of his rape sentence at the time of the incident, was not permitted to have contact with minor children as a condition of his probation. A second probation officer testified that Knight had a marijuana pipe in his pocket at the time of the incident and later tested positive for marijuana and cocaine. Knight testified that he did not get into the Ranger. Knight's friend, who was also attending the class, testified that Knight did not get into the Ranger and that he drove Knight home after the class was over.

(5) Knight raises four issues for this Court's consideration. He claims that: a) Probation Officer Green lied at the VOP hearing; b) his due process rights were violated; c) the VOP sentence was too harsh; and d) he and a friend of his have been harassed by Probation & Parole.

(6) Knight's first claim is that Probation Officer Green lied at the VOP hearing. It is the responsibility of the trial judge, sitting as the trier of fact, to assess the credibility of the witnesses at a VOP hearing.³ In this case, the trial judge found the testimony of Probation Officer Green to be more credible than that of Knight and his friend. On that basis, the trial judge concluded that Knight had violated the condition of his probation prohibiting him from having contact with minor children. The record reflects no evidence of any error or abuse of discretion on the part of the trial judge in making that finding. Therefore, Knight's first claim is without merit.

(7) Knight's second claim is that his due process rights were violated because the procedures enumerated in Superior Court Criminal Rule 32.1 were not followed.⁴ Because no objection regarding a due process violation was made at the hearing, either by Knight or his counsel, that claim is reviewed for plain error.⁵ The record does not reflect any error that jeopardized the fairness and integrity of the VOP hearing. To the contrary,

³ *Quarles v. State*, 696 A.2d 1334, 1340 (Del. 1997).

⁴ Rule 32.1 provides that the probationer shall receive: written notice of the alleged violation; disclosure of the evidence against him; an opportunity to appear and present evidence in his own behalf; the opportunity to question adverse witnesses; and notice of the right to retain counsel.

⁵ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process).

Knight was represented by counsel. Knight's counsel had secured a witness to appear on Knight's behalf and questioned the State's witnesses. There is no indication that Knight or his counsel were unaware of the alleged violations or that they were unprepared to address them. Therefore, Knight's second claim of a due process violation is without merit.

(8) Knight's third claim is that his sentence is too harsh. Under Delaware law, appellate review of sentences is extremely limited.⁶ Where the sentence falls within the statutory limits, appellate review is limited to whether the sentence was imposed on the basis of demonstrably false information or information lacking minimal indicia of reliability, or whether the sentencing judge relied upon impermissible factors or exhibited a closed mind.⁷ None of those considerations are extant in Knight's case. The record reflects that this was Knight's seventh VOP since he was sentenced in 1999. The Superior Court credited Knight with two years of Level V time when it sentenced him. There is no evidence suggesting that Knight's sentence exceeded the permissible limit. In the absence of any evidence of error or abuse of discretion on the part of the Superior Court, this claim is without merit.

⁶ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

⁷ *Id.* at 842-43.

(9) Knight, finally, claims that he and a friend have been harassed by Probation & Parole. Knight offers no factual support for this conclusory allegation. Therefore, it is without merit.

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