IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY DORSEY,	§	
	§	No. 355, 2012
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in
v.	§	and for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1103026752
Appellee.	§	

Submitted: December 6, 2012
Decided: February 4, 2013

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

O R D E R

This 4th day of February 2013, 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, it appears to the Court that:

(1) On December 5, 2011, a Superior Court jury convicted the appellant, Gregory Dorsey, of Possession of a Firearm by a Person Prohibited (PFBPP), Reckless Endangering in the Second Degree, and Resisting Arrest. On June 1, 2012, the Superior Court sentenced Dorsey, for PFBPP, to eight years at Level V, suspended after four years for four years at Level IV home confinement, suspended after six months for two years at Level III probation. For Reckless Endangering in the Second Degree and

Resisting Arrest, the Superior Court sentenced Dorsey to a total of two years at Level V, suspended for probation. This is Dorsey's direct appeal.

(2) Dorsey's appellate counsel ("Counsel")[1] has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)").[2] Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Counsel also reports that Dorsey did not submit any points for the Court's consideration.[3] In its response to the Rule 26(c) brief, the State has moved to affirm the Superior Court's judgment.

(3) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims.[4] 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.[5]

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[1] Dorsey was represented by different counsel at trial.
[2] *See* Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).
[3] The record reflects that Counsel provided Dorsey, as required, with a copy of the motion, the brief and appendix, and a letter explaining that Dorsey had a right to submit written points for the Court's consideration. *Id.*
[4] *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).
[5] *Id.*

(4) With respect to Dorsey's criminal convictions, the Court has concluded, upon careful review of the record, that Dorsey's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Dorsey could not raise a meritorious claim on appeal.

(5) As it concerns Dorsey's sentence for PFBPP, however, the record reflects an anomaly. The transcript of the June 1, 2012 sentencing proceeding indicates that the Superior Court sentenced Dorsey, for PFBPP, to eight years at Level V suspended after four years for four years at Level IV home confinement, suspended after six months for two years at Level III probation.[6] The June 1, 2012 sentence order appearing in the record, however, states that, for PFBPP, Dorsey was sentenced to only three years at Level V. Also appearing in the record is a "corrected sentence order" dated June 14, 2012 that sentences Dorsey, for PFBPP, to three years at Level V followed by one year at Level IV VOP center.[7]

(6) Clearly, there is confusion in the record with respect to Dorsey's sentence for PFBPP. We therefore conclude it is necessary to

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[6] *See* Sentencing Hr'g Tr. at 7 (June 1, 2012).

[7] The Court notes that neither Counsel nor the State mentioned the June 14, 2012 "corrected sentence order" in their respective submissions.

vacate the June 1, 2012 sentence, the June 1, 2012 sentence order, and the June 14, 2012 "corrected sentence order" and remand this matter for a new sentencing hearing, on notice, with Dorsey and his defense counsel present.[8]

NOW, THEREFORE, IT IS ORDERED that:

A. The State's motion to affirm is GRANTED IN PART. The judgment of the Superior Court with respect to Dorsey's convictions is AFFIRMED.

B. The June 1, 2012 sentence, the corresponding sentence order dated June 1, 2012, and the subsequent "corrected sentence order" dated June 14, 2012, are VACATED. This matter is REMANDED for a new sentencing hearing on notice to the parties with Dorsey and his defense counsel present. Jurisdiction is not retained.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

[8] *See Nave v. State*, 783 A.2d 120, 121 (Del. 2001) (citing *Jones v. State*, 672 A.2d 554, 556 (Del. 1996)) (concluding that a defendant had a right to be present when an imposed sentence was thereafter substantively changed); *Fullman v. State*, 431 A.2d 1260, 1264-65 (Del. 1981).