

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN STIGILE (BROWN),	§
	§
Defendant Below-	§ No. 445, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID Nos. 1009022418,
Plaintiff Below-	§ 1009021948 and 1009006234
Appellee.	§

Submitted: November 15, 2011

Decided: January 24, 2012

Before **HOLLAND, BERGER,** and **JACOBS,** Justices.

**ORDER**

This 24<sup>th</sup> day of January 2012, 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) The defendant-appellant, Brian Stigile, pled guilty on May 10, 2011 to one count of attempted second degree burglary, one count of second degree conspiracy and two counts of theft. On July 29, 2011, the Superior Court sentenced Stigile, among other things, to eight years at Level V incarceration to be suspended after serving a three year minimum mandatory term in prison to be followed by two years at Level III probation on his

conviction for attempted burglary. It is this part of his sentence that Stigile challenges in this direct appeal.

(2) Stigile's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Stigile's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Stigile's attorney informed him of the provisions of Rule 26(c) and provided Stigile with a copy of the motion to withdraw and the accompanying brief. Stigile also was informed of his right to supplement his attorney's presentation. Stigile has raised one issue for this Court's consideration. The State has responded to Stigile's argument, as well as to the position taken by Stigile's counsel, and has moved to affirm the Superior Court's judgment.

(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>1</sup>

(4) Stigile contends that he should not be subjected to the statutory three-year minimum mandatory sentence for his attempted burglary conviction because: (i) the enhanced sentencing provision of 11 Del. C. § 825(b)(2) is not applicable in his case; (ii) Section 825(b)(2) is unconstitutionally vague and ambiguous; and (iii) the record was insufficient to determine that Section 825(b)(2) applied to his case.

(5) Section 825(b)(2) provides that:

Notwithstanding any provision of this section or Code to the contrary, any person convicted of burglary in the second degree shall receive a minimum sentence of ... (2) Three years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction.<sup>2</sup>

Section 825(c) provides that the enhanced sentencing provision of Section 825(b) also applies to a conviction for attempted second degree burglary.<sup>3</sup>

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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).

<sup>2</sup> DEL. CODE ANN. tit. 11, § 825(b)(2) (2007).

<sup>3</sup> *Id.* § 825(c).

(6) Stigile concedes that he previously was convicted of first degree burglary on October 21, 2004 and that his date of termination of incarceration for that conviction was July 13, 2006. In the present case, Stigile was indicted for committing the crime of attempted second degree burglary on or about September 16, 2010, and he pled guilty to that charge. Thus, Stigile unquestionably committed the offense of attempted second degree burglary “within 5 years of the date of termination”<sup>4</sup> of the period of incarceration imposed for his previous burglary conviction. Contrary to Stigile’s argument, it is the date of the commission of the subsequent offense *not* the date of conviction or the date of sentencing for that offense which determines if Section 825(b)(2) applies. There is nothing ambiguous about the statute. Moreover, Stigile agreed as part of his plea agreement and during the plea colloquy that he was subject to the three-year minimum mandatory sentencing because of his prior conviction. Stigile is bound by those admissions, and the Superior Court was entitled to rely on them without demanding further proof from the State.<sup>5</sup>

(7) This Court has reviewed the record carefully and has concluded that Stigile’s appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Stigile’s counsel has made a

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<sup>4</sup> *Id.* § 825(b)(2).

<sup>5</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

conscientious effort to examine the record and the law and has properly determined that Stigile 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/ Carolyn Berger  
Justice