IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK GRAYSON,	§	
	§	No. 471, 2012
Defendant Below-	§	
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 1109006589
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: January 28, 2013
Decided: February 19, 2013

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

O R D E R

This 19th 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 thereto, it appears to the Court that:

(1) The defendant-appellant, Mark Grayson, was found guilty by a Superior Court jury of Possession With Intent to Deliver Heroin Within 300 Feet of a Park and Resisting Arrest. On the drug conviction, he was sentenced to 8 years of Level V incarceration, to be suspended after 2 years for 6 months at Level IV Halfway House with the balance of the sentence to be served at Level III probation. On the conviction of resisting arrest, he

was sentenced to 1 year at Level V, to be suspended for 1 year of Level II probation. This is Grayson's direct appeal.

(2) Grayson'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 could arguably support the appeal; and b) the Court must conduct its own review of the record to determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.[1]

(3) Grayson's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Grayson's counsel informed Grayson 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. Grayson also was informed of his right to supplement his attorney's presentation. Grayson responded with a brief that raises two issues for this Court's consideration. The State has responded to the position taken by Grayson's

[1] *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).

counsel as well as the issues raised by Grayson and has moved to affirm the Superior Court's judgment.

(4) Grayson raises two issues for this Court's consideration. He claims that a) there was insufficient evidence presented at trial to support his conviction of Possession With Intent to Deliver Heroin Within 300 Feet of a Park; and b) there was improper contact between a juror and the prosecutor during trial.

(5) The evidence presented at trial established the following. At approximately 1:15 p.m. on September 18, 2011, a Wilmington police officer and his partner observed Grayson walking westbound with another individual on East 26th Street adjacent to Brown-Burton Winchester Park in the City of Wilmington, Delaware. When the police officers stopped to talk to Grayson, he ran off. One of the officers chased Grayson into the park while the other officer remained at the police vehicle with Grayson's companion. As Grayson jumped over a fence adjacent to a baseball field, the officer called to him to stop. Grayson then ran northbound across 26th Street. Other officers called to the scene intercepted Grayson and he was taken into custody.

(6) The officer chasing Grayson observed him throwing something onto the ground as he jumped over the fence. Two bundles of what appeared

to be heroin were subsequently found at that location and $310.00 was found on Grayson's person---specifically, 15 twenty-dollar bills and one ten-dollar bill. The police observed no needles or "straws" for the ingestion of heroin on Grayson's person, nor did they observe any sign that he himself was addicted to heroin. The Medical Examiner's Office report confirmed that the bundles contained .65 grams of heroin, which was introduced into evidence at trial.

(7) A detective with 10 years of experience in the Drug, Vice and Organized Crime Division of the Wilmington Police Department testified as an expert regarding the trade in illegal drugs. He stated that the amount of money found on Grayson's person, including the specific denominations of the bills, was consistent with drug dealing. He also stated that the street value of the bundles of heroin was approximately $50.00 each. He, finally, stated that, in his opinion, the two bundles of heroin were packaged in a way that indicated they were intended for sale.

(8) Grayson's first claim is that there was insufficient evidence presented at trial to support his conviction of Possession With Intent to Deliver Heroin Within 300 Feet of a Park.[2] On a claim of insufficiency of

[2] Del. Code Ann. tit. 16, §§ 4701, 4714 and 4768 (". . . any person who illegally distributes, delivers or possesses a controlled substance . . . within 300 feet of the boundaries of [a] . . . park . . . is guilty of a felony . . . .")

the evidence, the relevant inquiry is whether, considering the evidence presented in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[3]

(9) In this case, the uncontroverted evidence was that Grayson, while running from the police, dropped something on the ground while he was scaling a fence. The dropped items were later determined to be two bundles of heroin. Grayson was immediately adjacent to a City of Wilmington park when the items were dropped. While Grayson argues that the police expert's testimony was suspect, the jury apparently found him to be credible and accepted his testimony that the earmarks of drug dealing were present in this case, as it was within their province to do.[4] We, therefore, conclude that Grayson's first claim is without merit.

(10) Grayson's second claim is that there was improper contact between a juror and a prosecutor. The transcript of trial reflects that, at the end of the first day of trial, a juror approached the prosecutor and asked him where to catch the bus. The prosecutor said that he was sorry, but he could not talk to the juror. There was no further contact between the juror and the

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[3] *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995).
[4] *Hunter v. State*, 55 A.3d 360, 369-70 (Del. 2012) (citing *Hutchins v. State*, 153 A.2d 204, 207 (Del. 1959)).

prosecutor. The next morning before trial began, the prosecutor reported the contact to the judge. The judge asked defense counsel if he wished to make a motion, but defense counsel said that he believed the contact to be "inconsequential." The judge stated that he would speak to the juror if defense counsel desired, but defense counsel stated that he believed it would only exacerbate the situation and the judge agreed.

(11) In order to succeed on a claim of juror misconduct, the defendant must demonstrate the existence of circumstances that, if true, would be deemed inherently prejudicial to the defendant, raising a presumption of prejudice in favor of the defendant.[5] Grayson has failed to demonstrate that he was prejudiced in any way by the fleeting contact between the juror and the prosecutor. Moreover, we conclude that the judge properly investigated the matter, conferred with counsel and determined that no action should be taken. To the extent that Grayson claims that his attorney improperly failed to object to the juror continuing on the jury panel, any such arguable claim of ineffective assistance will not be considered by this Court on direct appeal.[6] As such, we conclude that Grayson's second claim, too, is without merit.

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[5] *Sykes v. State*, 953 A.2d 261, 272-73 (Del. 2008).
[6] *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

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

NOW, THEREFORE, IT IS ORDERED that the State of Delaware'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