IN THE SUPREME COURT OF THE STATE OF DELAWARE

TIMOTHY J. PABST,	§	
	§	No. 645, 2013
Defendant Below-	§	
Appellant,	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for Sussex County
	§	Cr. ID 1304021903
Plaintiff Below-	§	
Appellee.	§	

Submitted: March 13, 2014
Decided: April 17, 2014

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

O R D E R

This 17th day of April 2014, upon consideration of the appellant's Supreme Court Rule 26(c) brief, the State's response thereto, and the record below, it appears to the Court that:

(1) The defendant-appellant, Timothy Pabst, pled guilty on October 23, 2013 to three counts of Dealing in Pornographic Materials Involving Children. The Superior Court sentenced him to a total period of seventy-five years at Level V incarceration to be suspended after serving six years in prison for decreasing levels of supervision. This is Pabst's direct appeal.

(2) Pabst's counsel on appeal has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c). Counsel asserts that, based

upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Pabst's attorney informed him of the provisions of Rule 26(c) and provided Pabst with a copy of the motion to withdraw and the accompanying brief. Pabst also was informed of his right to supplement his attorney's presentation. Pabst has raised several issues for this Court's consideration. The State has responded to Pabst's issues, as well as to the position taken by Pabst'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.[1]

(4) The record reflects that, on April 14, 2013, Pabst's ex-wife discovered the parties' then-seven-year-old daughter watching pornography on a computer in her home. The child told her mother that her father had shown her pornographic material on the computer the day before when he

[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).

was visiting his daughter at his ex-wife's house. Pabst's ex-wife then found additional pornographic downloads on her home computer. She called the Division of Family Services. The child was interviewed at the Children's Advocacy Center and reported during the interview that she had watched her father view "bad things" on the computer, including naked children. Based on information provided by Pabst's ex-wife and their daughter, the police obtained a search warrant for Pabst's home computer where they found additional images of child pornography. Pabst was indicted in June 2013 on twenty-five counts of Dealing in Child Pornography, one count of Providing Obscene Material to a Person under 18, and one count of Endangering the Welfare of a Child.

(5) On June 14, 2013, the prosecutor provided Pabst's counsel with police reports and other discovery materials. The prosecutor's letter indicated that she was providing the material on the express condition that the materials not be given to Pabst. On June 21, 2014, defense counsel forwarded the materials to Pabst. Pabst acknowledges that he immediately returned the materials to his attorney because he did not want the materials in the prison due to the nature of the charges against him. Pabst later changed his mind and asked to have the materials returned to him. Realizing the stipulation in the prosecutor's letter, defense counsel indicated that she

could not provide Pabst with copies. Counsel reviewed the discovery materials with him but would not make additional copies for him to keep. On October 4, 2013, Pabst also had the opportunity to watch his daughter's two CAC interviews.

(6) On October 23, 2013, Pabst pled guilty to three of the twenty-seven charged offenses. In exchange for his guilty plea, the State dismissed the remaining charges. The transcript of the guilty plea hearing reflects that the charges, as well as the sentencing ranges and collateral consequences of entering a plea, were carefully explained to Pabst. Pabst admitted under oath that he had committed the three offenses of possessing child pornography. He indicated that he was satisfied with his counsel's representation and that no one had promised him anything in exchange for his plea.

(7) On appeal, Pabst contends that the prosecutor engaged in misconduct and violated his due process rights when she provided defense counsel discovery materials with the proviso that copies not be given to Pabst. Pabst also suggests that the police lacked probable cause to obtain a search warrant for his home computer. He states that he "reluctantly" pled guilty because he still had not received his own copies of the discovery materials within a week of his scheduled trial date.

(8) We find no merit to any of Pabst's contentions. To the extent Pabst is arguing that his guilty plea was involuntary because he did not receive his own copies of the State's discovery materials, that contention is contradicted by the record. The transcript of the guilty plea hearing reflects that the Superior Court carefully reviewed all aspects of Pabst's decision to plead guilty. Among other things, Pabst stated under oath that he was satisfied with his counsel's representation, that no one had promised him what his sentence would be, and that he was pleading guilty because he was in fact guilty. In the absence of clear and convincing evidence to the contrary, Pabst is bound by his sworn representations.[2] We conclude that the plea agreement, the guilty plea form, and the transcript of the plea hearing all support a finding that Pabst entered his guilty plea knowingly, intelligently, and voluntarily. His knowing and voluntary guilty plea waives any defenses he might have had to the charges, including challenges to the sufficiency of the evidence or the legality of the search of his computer.[3]

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

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[2] *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

[3] *See Cook v. State*, 1990 WL 109888 (Del. July 16, 1990) (*citing Tollett v. Henderson*, 411 U.S. 258, 266-67 (1973)).

conscientious effort to examine the record and the law and has properly determined that Pabst could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Randy J. Holland
Justice