IN THE SUPREME COURT OF THE STATE OF DELAWARE

COREY BOWERS,	§	
	§	No. 524, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID 1204010456
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: March 31, 2014
Decided: May 16, 2014

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

O R D E R

This 16th day of May 2014, 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) Following a Superior Court jury retrial in July 2013, the defendant-appellant, Corey Bowers, was convicted of Carjacking in the First Degree (a class B felony), Robbery in the First Degree (a class B felony), two counts of Aggravated Act of Intimidation (a class D felony), two counts of Terroristic Threatening (a class A misdemeanor), and two counts of Misuse of Prisoner Mail (a class A misdemeanor). After a presentence investigation, the Superior Court sentenced Bowers to a total period of fifty years at Level V incarceration, to be

suspended after serving sixteen years in prison for decreasing levels of supervision. This is Bowers' direct appeal.

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

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[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).

(4) The evidence in this case established that, on April 14, 2012, the victim noticed a man standing outside a drug store in New Castle, Delaware as she walked into that store. After she left the store and got into her car, that same man got into her front passenger seat. He pointed a gun at her and demanded her car keys. He also grabbed her purse. The victim ran back into the drug store and called police. A witness in the drug store heard the victim screaming about the robbery. The witness got into his own vehicle and followed the suspect who was driving the victim's car. The witness stayed on his cell phone with the police and relayed information about the suspect's whereabouts. Police officers took over pursuit of the suspect.

(5) After momentarily losing sight of the suspect, officers found the victim's vehicle crashed at the southwest corner of 23rd and Washington Streets in the City of Wilmington. The victim's purse was inside the car along with a freshly painted black, toy gun containing smudges on the trigger and butt. Officers observed a man running away from the vehicle. A foot chase ensued, and Bowers was caught and arrested. Bowers had black smudges on his hand. Police returned to the drug store with Bowers, where the victim positively identified Bowers as her assailant.

(6) The trial testimony also established that, in January 2013 and March 2013 (shortly after Bowers' first trial ended with a hung jury), the victim received

two letters with a return address from the Howard R. Young Correctional Institution. The victim opened the first letter, which contained a threat to her and her family's safety if she appeared in court to testify against Bowers. The victim took the second letter, unopened, to the police. DNA recovered from the flaps of both envelopes matched Bowers' DNA sample.

(7) Bowers testified in his own defense at trial. He claimed that, on April 14, 2012, he had been in the neighborhood of 23rd and Washington Streets to visit a family member who lived nearby. He had been playing a dice game with other men when he saw a recklessly driven car approach. Bowers testified that he was running away from the car to avoid being hit by it. Bowers also testified that he had nothing to do with the threatening letters mailed to the victim before his retrial. The jury convicted him on all charges.

(8) In response to his counsel's Rule 26(c) brief, Bowers raises five issues for the Court's consideration on appeal. First, he claims that the DNA "process was highly questionable." Second, he argues that the State should not have been allowed to retry his case after the first jury was hung, and, at the very least, the second trial should have been presented by a different prosecutor before a different judge. Third, he asserts that he should be resentenced. Fourth, Bowers contends that, contrary to police testimony at trial, surveillance video shows that there were other people besides Bowers near the victim's car after it crashed. Finally, Bowers

claims that it was not possible for him to have sent the threatening letters to the victim. We find no merit to any of Bowers' claims.

(9) At trial, the State presented the testimony of a forensic analyst who tested DNA retrieved from the envelopes containing the two threatening letters sent to the victim. The analyst compared that DNA against Bowers' DNA sample. The expert testified to a reasonable degree of scientific certainty that Bowers was the source of the DNA samples obtained from both envelopes. In light of that testimony, we find no support for Bowers' conclusory allegation that the DNA evidence was questionable.

(10) Bowers next argues that the State should not have been allowed to retry him after his first trial in January 2013 ended in a hung jury. There is no merit to this claim. Double jeopardy protections apply to prevent a retrial when a first trial ends in acquittal but *not* when a first trial ends in a hung jury.[2] The jury's failure to reach a unanimous verdict in Bowers' first trial was not the equivalent of an acquittal.[3] The State, therefore, was entitled to retry Bowers under the circumstances of this case. Moreover, Bowers' assertion that his retrial should have been presented by a different prosecutor before a different judge is too vague

[2] *Richardson v. United States*, 468 U.S. 317, 325 (1984).

[3] See *id*.

and conclusory to be capable of review.[4] He sets forth no reasons for his assertion, nor does he cite to any supporting facts or law. Accordingly, we deem this conclusory assertion to be waived.[5]

(11) Similarly, Bowers offers no grounds to support his claim that he should be resentenced. The jury convicted Bowers of two class B felonies, two class D felonies, and four class A misdemeanors. By law, the Superior Court could have sentenced Bowers to a total period of seventy years at Level V incarceration.[6] Instead, the Superior Court sentenced Bowers to a total period of fifty years at Level V incarceration to be suspended after sixteen years in prison for decreasing levels of supervision. The sentence imposed by the Superior Court is legal on its face. Given the absence of any facts or argument to support Bowers' claim that he should be resentenced, we find his claim too vague to be reviewed.

(12) Bowers' next claim challenges the credibility of the two officers who testified at trial that Bowers was the only person seen in the area running away from the victim's abandoned car. Bowers contends that surveillance video admitted at trial contradicts that testimony and shows that other pedestrians were in

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[4] *See In re Estate of Hall*, 2005 WL 2473791 (Del. Aug. 26, 2005) (noting that, while this Court allows pro se litigants leeway in meeting briefing requirements, the litigant must at least assert an argument that is capable of review).

[5] *In re Demby*, 2008 WL 534273, at *3 (Del. Feb. 28, 2008) (holding that conclusory assertions of constitutional violations will be considered waived on appeal).

[6] *See* 11 *Del. C.* §§ 4205(b)(2), 4205(b)(4), 4206(a) (2007).

the area one block from the crash site. It was the jury's responsibility, however, to weigh this evidence, to determine the witnesses' credibility, and to resolve any conflicts in the evidence.[7] Under the circumstances, the jury made an appropriate credibility determination. We find no error.

(13) Bowers' final argument is that there was no way that he could have sent threatening letters to the victim because he did not know her address and had no means to obtain her address while he was in prison. To the extent Bowers is challenging the sufficiency of the evidence to convict him of misusing prison mail and threatening the victim, our standard of review is whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt.[8] Notwithstanding Bowers' arguments to the contrary, the DNA evidence was more than sufficient to prove beyond a reasonable doubt that Bowers sent the threatening letters to the victim from prison. Accordingly, we find no merit to this claim.

(14) This Court has reviewed the record carefully and concludes that Bowers' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Bowers' counsel has made a conscientious effort

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[7] *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

[8] *Robertson v. State*, 596 A.2d 1345, 1355 (Del. 1991).

to examine the record and the law and has properly determined that Bowers 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/ Jack B. Jacobs
Justice