

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CRYSTAL LYSINGER,	§	
	§	No. 632, 2013
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. 1212003977
Appellee.	§	

Submitted: May 1, 2014

Decided: June 5, 2014

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

**ORDER**

This 5<sup>th</sup> day of June 2014, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26(c) (“Rule 26(c)”), her attorney’s motion to withdraw, and the State’s response, it appears to the Court that:

(1) On January 22, 2013, the appellant, Crystal Lysinger, was indicted on charges of Burglary in the Second Degree, Theft of a Firearm, Criminal Mischief, Theft of a Controlled Substance, and Misdemeanor Theft. On August 15, 2013, Lysinger pleaded guilty to Burglary in the Third Degree (as a lesser-included offense of Burglary in the Second Degree) and Misdemeanor Theft. The remaining offenses, including Theft of a Firearm, Criminal Mischief and Theft of a Controlled Substance, were *nolle prossed*.

(2) Lysinger was sentenced on October 18, 2013, following a presentence investigation. For Burglary in the Third Degree, Lysinger was sentenced to three years at Level V, suspended after successful completion of the Key Village Program, for three months at Level IV Home Confinement, followed by one year at Level III probation. For Misdemeanor Theft, Lysinger was sentenced to one year at Level V suspended for one year at Level III probation. This is Lysinger's direct appeal.

(3) On appeal, Lysinger's defense counsel ("Counsel") has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)"). Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Lysinger responded to Counsel's presentation with a written submission that raises three sentencing issues for the Court's consideration. The State has responded to the position taken by Counsel as well as the issues raised by Lysinger and has moved to affirm the Superior Court's judgment.

(4) The standard and scope of review applicable to the consideration of a Rule 26(c) brief and motion to withdraw is twofold.<sup>1</sup>

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<sup>1</sup> *Person 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).

First, the Court must be satisfied that Counsel made a conscientious examination of the record and the law for claims that could arguably support the appeal.<sup>2</sup> Second, the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of even arguably appealable issues that it can be decided without an adversary presentation.<sup>3</sup>

(5) This Court's review of a sentence is well-established.<sup>4</sup> A defendant may challenge a sentence on the grounds that it is unconstitutional, based on false or unreliable information, or is the result of judicial bias.<sup>5</sup> Otherwise, appellate review is generally limited to ascertaining whether a sentence has exceeded statutory limits.<sup>6</sup>

(6) In her first claim on appeal, Lysinger complains that the sentence imposed on October 18, 2013 exceeded the SENTAC sentencing guidelines. It is well-settled that a sentence not exceeding the statutory maximum cannot be reviewed "on the sole basis that a punishment deviated from the SENTAC sentencing guidelines."<sup>7</sup> In this case, because Lysinger's

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See *Pinkston v. State*, 2014 WL 1657769 (Del. April 22, 2014) (citing *Cruz v. State*, 990 A.2d 409, 416 (Del. 2010))

<sup>5</sup> See *Stanley v. State*, 2013 WL 543897 (Del. Feb. 12, 2013) (citing *Siple v. State*, 701 A.2d 79, 83 (Del. 1997)).

<sup>6</sup> *Id.*

<sup>7</sup> *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).

sentence did not exceed the statutory maximum, her first claim is without merit.<sup>8</sup>

(7) In her second claim on appeal, Lysinger contends that the charges of Theft of a Firearm and Theft of a Controlled Substance, which were dismissed as part of the plea agreement on August 15, 2013, were nonetheless considered by the Superior Court when imposing sentence on October 18, 2013. In support of her claim, Lysinger references the Superior Court's November 22, 2013 order denying her motion for reduction of sentence in this case, wherein the court stated that: "Investigative efforts determined that [she] removed a handgun, hunting bow, knife, television, kitchen items, and prescription medications" from a residence in Townsend, Delaware.<sup>9</sup> Upon careful review of the sentencing transcript, the Court has concluded that Lysinger's second claim is without merit. At no point during Lysinger's sentencing on the charges of Burglary in the Third Degree and Misdemeanor Theft did the parties or the Superior Court refer to the

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<sup>8</sup> See Del. Code Ann. tit. 11, §§ 824, 4205(b)(6) (2010) (providing that Burglary third degree, a class F felony, carries a sentence of up to three years at Level V); see Del. Code Ann. tit. 11, §§ 841(c)(1), 4206(a) (2010 & Supp. 2014) (providing that Theft, a class A misdemeanor, carries a sentence of up to one year at Level V).

<sup>9</sup> *State v. Lysinger*, Del. Super. Ct., Cr. ID No. 1212093177, Streett, J. (Nov. 22, 2013) (order).

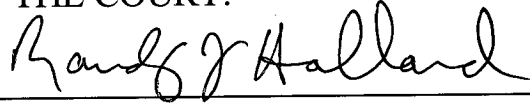
previously *nolle-prossed* charges of Theft of a Firearm and/or Theft of a Controlled Substance.

(8) In her third claim on appeal, Lysinger alleges that the Superior Court abused its discretion when sentencing her to a prison-based substance abuse program instead of to an outpatient treatment program as was recommended in a TASC evaluation and the presentence report. Again, upon review of the sentencing transcript, the Court has concluded that Lysinger's claim is without merit. The sentencing transcript reveals that the Superior Court imposed the sentence it did based on Lysinger's need for effective drug treatment at an increased level of supervision. Nothing in the record suggests that the sentence was unconstitutional or that the Superior Court sentenced Lysinger upon the basis of false, impermissible or unreliable information.

(9) In this case, upon careful review of the record, the Court has concluded that Lysinger'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 Lysinger could not raise a meritorious issue on 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:

A handwritten signature in cursive script, reading "Randy J. Hallard", written in black ink. The signature is positioned above a horizontal line.

Justice