

SUPREME COURT OF THE STATE OF DELAWARE

Pennington v. State

Pennington v. State · No. No. 439, 2014 · Decided December 15, 2014

SUMMARY

The Delaware Supreme Court affirmed the Superior Court’s denial of David Pennington’s motion for postconviction relief following his guilty pleas and sentences for dealing in and possessing child pornography. Applying Supreme Court Rule 26(c), the Court found the appeal wholly without merit and devoid of any arguably appealable issue, and deemed appointed counsel’s motion to withdraw moot.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Karen L. Valihura; Chief Justice Strine; Justice Ridgely; Justice Valihura
JURISDICTION	Delaware
DECIDED	December 15, 2014
DOCKET	No. 439, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Superior Court's order granting appointed postconviction counsel's motion to withdraw and denying Pennington's motion for postconviction relief.
STANDARD OF REVIEW	On review of a Supreme Court Rule 26(c) motion to withdraw, the Delaware Supreme Court must determine whether counsel made a conscientious examination of the record and law for arguable claims and independently review the record to determine whether the appeal is wholly devoid of at least arguably appealable issues.
PRECEDENTIAL VALUE	published
PARTIES	David Pennington v. State of Delaware

TOPICS

- post-conviction relief
- appellate procedure
- criminal procedure
- sentencing
- ineffective assistance

PRACTICE AREAS

criminal procedure

post-conviction relief

appellate procedure

sentencing

QUESTIONS PRESENTED

1. Whether appointed postconviction counsel satisfied the requirements for withdrawal under Delaware Superior Court Criminal Rule 61(e)(2) and Supreme Court Rule 26(c).
2. Whether Pennington's postconviction appeal presented any arguably appealable or meritorious issue, including his claims of vindictive prosecution, improper sentence enhancement, lack of benefit from the plea agreement, and ineffective assistance of counsel.

HOLDINGS

1. Counsel may withdraw when counsel has conscientiously examined the record and law for arguable claims, provided the defendant with the motion and supporting brief and an opportunity to identify issues, and the Supreme Court independently determines that the appeal is wholly devoid of at least arguably appealable issues.
2. Pennington's appeal was wholly without merit and devoid of any arguably appealable issue; the Superior Court's denial of postconviction relief was affirmed.

KEY QUOTATIONS

“When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), this Court must: (i) be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (ii) 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.” (at 3)

“This Court has reviewed the record carefully and has concluded that Pennington’s appeal is wholly without merit and devoid of any arguably appealable issue.” (at 4)

FACTUAL BACKGROUND

In April 2013, Pennington was indicted on two counts of Dealing in Child Pornography. He pleaded guilty to one count of Dealing in Child Pornography and one count of Possession of Child Pornography and was sentenced to twenty-five years of Level V incarceration on the first count and three years of Level V incarceration followed by six months of Level IV home confinement on the second count. The sentencing judge cited the risk Pennington posed to children in the community when imposing the maximum sentence.

PROCEDURAL HISTORY

Pennington pleaded guilty to one count each of Dealing in Child Pornography and Possession of Child Pornography and received aggregate Level V and related custodial sentences. He filed a pro se motion for postconviction relief asserting vindictive prosecution, improper sentence enhancement, lack of benefit from the plea agreement, and ineffective assistance of counsel. The Superior Court appointed postconviction counsel, granted counsel's motion to withdraw under Superior Court Criminal Rule 61(e)(2), and denied relief. On appeal,

counsel filed a Supreme Court Rule 26(c) motion to withdraw, and Pennington did not identify additional issues for review.

DISPOSITION

affirmed

CASES CITED

- Penson v. Ohio, 488 U.S. 75, 83 (1988)
- Leacock v. State, 690 A.2d 926, 927-28 (Del. 1996)