

SUPREME COURT OF THE STATE OF DELAWARE

Morton v. State

No. 330, 2021 · No. No. 330, 2021 · Decided July 12, 2022

SUMMARY

The Delaware Supreme Court affirmed the Family Court’s adjudication of Sidney Morton as delinquent for first-degree burglary, second-degree conspiracy, and theft under \$1,500. Applying the review standard for appellate counsel’s motion to withdraw under Delaware Supreme Court Rule 26(c), the Court found the appeal wholly without merit and devoid of any arguably appealable issues.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Collins J. Seitz, Jr., Chief Justice; Karen L. Valihura, Justice; Tamika R. Montgomery-Reeves, Justice
JURISDICTION	Delaware
DECIDED	July 12, 2022
DOCKET	No. 330, 2021
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a Family Court adjudication of delinquency and disposition. Appellate counsel filed a Delaware Supreme Court Rule 26(c) brief and motion to withdraw, asserting that the record presented no arguably appealable issue.
STANDARD OF REVIEW	On a Rule 26(c) motion to withdraw, the Court determines whether counsel made a conscientious examination of the record and law for arguably appealable claims and independently reviews the record to determine whether the appeal is wholly devoid of at least arguably appealable issues.
PRECEDENTIAL VALUE	Published Delaware Supreme Court order; precedential treatment not expressly stated in the opinion
PARTIES	Sidney Morton v. State of Delaware

TOPICS

- appellate procedure
- standard of review
- family law procedure
- criminal procedure

PRACTICE AREAS

appellate procedure

juvenile delinquency

criminal procedure

family law procedure

QUESTIONS PRESENTED

1. Whether appellate counsel satisfied the requirements for withdrawal under Delaware Supreme Court Rule 26(c).
2. Whether the record contained any arguably appealable issue requiring adversary presentation or relief from the Family Court's adjudication and disposition.

HOLDINGS

1. Counsel satisfied Rule 26(c) by making a conscientious examination of the record and law, and the Supreme Court independently determined that the appeal was wholly without merit and devoid of any arguably appealable issue.

KEY QUOTATIONS

“First, the Court must be satisfied that defense counsel made a conscientious examination of the record and the law for claims that could arguably be raised on appeal. Second, the 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.” (¶ 3)

“The Court has reviewed the record carefully and has concluded that Morton’s appeal is wholly without merit and devoid of any arguably appealable issues.” (¶ 4)

FACTUAL BACKGROUND

Nancy Harrington's home in Wilmington was burglarized on May 20, 2021. A motion-activated interactive camera showed several young men ransacking the home, and Harrington recognized Morton as one of them. A YRS probation officer testified that Morton was wearing a GPS ankle bracelet and that GPS data placed him near the crime scene at the time of the burglary.

PROCEDURAL HISTORY

Morton was adjudicated delinquent in the Family Court after being charged with first-degree burglary, second-degree conspiracy, and theft under \$1,500. The Family Court imposed an indefinite secure commitment with the Department of Youth Rehabilitative Services, suspended for a Level IV staff-secure commitment followed by aftercare. Morton appealed directly, and the Delaware Supreme Court reviewed counsel's Rule 26(c) submission and the Family Court record.

DISPOSITION

affirmed

CASES CITED

- *Penson v. Ohio*, 488 U.S. 75, 81-83 (1988)
- *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988)
- *Anders v. California*, 386 U.S. 738, 744 (1967)

OPINION

Morton v. State

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SIDNEY MORTON,¹ §

§ No. 330, 2021 Respondent Below, § Appellant, § § Court Below—Family Court v. § of the State of Delaware §

STATE OF DELAWARE, §

§ File No. 2105013324 Appellee. § Submitted: May 4, 2022 Decided: July 12, 2022 Before SEITZ, Chief Justice; VALIHURA and MONTGOMERY-REEVES, Justices.

ORDER

After consideration of the appellant’s brief filed under Supreme Court Rule 26(c), his attorney’s motion to withdraw, the State’s response, and the Family Court record, it appears to the Court that:

(1) On May 20, 2021, Nancy Harrington’s home—located at 1314 West

3rd Street, Wilmington, Delaware—was burglarized. Following an investigation, the police identified the fourteen-year-old appellant, Sidney Morton, as a suspect. Morton was arrested and charged with first-degree burglary, second-degree conspiracy, and theft under \$1,500. Several witnesses for the State testified at trial, 1 The Court previously assigned a pseudonym to the juvenile appellant under Supreme Court Rule 7(d). including: (i) Harrington, who testified that she was at work when she observed (on a motion-activated and interactive camera that she maintained in her house to communicate with her children) several young men—one of whom she recognized as Morton—ransacking her home around 11:00 pm on May 20, 2021; and (ii) a probation officer with the Department of Youth Rehabilitative Services (“YRS”), who testified that at the time of the burglary, Morton was wearing a GPS-monitoring ankle bracelet and GPS plot points placed him in the area of the crime scene. After the close of evidence, the Family Court adjudicated Morton delinquent as charged. On October 11, 2021, the Family Court sentenced Morton to an indefinite secure commitment with YRS, suspended for a Level IV staff-secure commitment at a placement at YRS’s discretion for a period of six months or completion of the program, followed by aftercare. This is Morton’s direct appeal.

(2) Morton’s counsel on appeal has filed a brief and a motion to withdraw

under Rule 26(c). Counsel asserts that, after a complete and careful examination of the record, there are no arguably appealable issues. Morton’s attorney informed Morton and his parents of the provisions of Rule 26(c) and provided them with a copy of the motion to withdraw and a draft of the accompanying brief. Counsel also informed Morton and his parents of Morton’s right to

supplement his attorney's presentation. Neither Morton nor his parents raised any issues for the Court's 2 consideration. The State has responded to the position taken by Morton's counsel and has moved to affirm the Family 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. First, the Court must be satisfied that defense counsel made a conscientious examination 2 of the record and the law for claims that could arguably be raised on appeal. Second, the 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.³

(4) The Court has reviewed the record carefully and has concluded that Morton's appeal is wholly without merit and devoid of any arguably appealable issues. We also are satisfied that Morton's counsel made a conscientious effort to examine the record and the law and properly determined that Morton could not raise a meritorious claim in this appeal. 2 *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wis.*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

3 *Penson*, 488 U.S. at 81-82. 3 NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED. Counsel's motion to withdraw is moot. BY THE COURT: /s/ Collins J. Seitz, Jr. Chief Justice 4