IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID A. MUMFORD, Defendant Below, Appellant, v. STATE OF DELAWARE, Plaintiff Below, Appellee.	No. 388, 1999 Court Below: Superior Court of the State of Delaware, in and for Sussex County in Cr. A. Nos. S98-12-0216. Def. ID No. 9811008855

Submitted: February 18, 2000
Decided: April 6, 2000

Before **VEASEY, Chief Justice, HARTNETT and BERGER,** Justices.

O R D E R

This 6th day of April 2000, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c) ("Rule 26(c)"), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, David A. Mumford, was indicted on two counts of delivery of cocaine and entered a guilty plea to one of those counts on June 24, 1999. On August 6, 1999, after a pre-sentence investigation, Mumford was sentenced to three years at Level V incarceration, with credit for time served, suspended for nine months at a Level IV Residential Substance Abuse

Treatment Program ("RSTAP"). Upon successful completion of the RSATP, Mumford was to be placed at Level III supervision for 27 months. This is Mumford's direct appeal.

(2) Mumford's trial counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). Mumford's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. In a one-page letter to his counsel, Mumford challenges the sufficiency of the undercover police officer's identification of Mumford as the subject who sold crack cocaine. The State has responded to the position taken by Mumford's counsel, to Mumford's points, and has moved to affirm the conviction and sentence.

(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) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and (b) 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.[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) This Court has reviewed the record carefully and has concluded that Mumford's appeal is wholly without merit and devoid of any arguably appealable issue. During the guilty plea colloquy, Mumford admitted that he, in fact, knowingly and unlawfully delivered crack cocaine. Mumford does not offer any support for his suggestion now that he is innocent of the crime, nor does the record support any basis for such a suggestion. To the extent Mumford is complaining about a defect in the arrest warrant or the indictment, or about any other error that occurred before the plea, a properly entered plea of guilty, such as the plea entered here, constitutes a waiver of all errors or defects occurring before the plea, except a lack of subject matter jurisdiction.[2]

(5) The Court has reviewed the record carefully and has concluded that Mumford's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Mumford's counsel has made a conscientious effort to examine the record and has properly determined that Mumford 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.

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[2] *Fullman v. State*, Del. Supr., No. 268, 1988, Christie, C.J., 1989 WL27739 (Feb. 22, 1989) (ORDER).

BY THE COURT:

/s/ Carolyn Berger
Justice