

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WALTER C. GOODSON,	§	
	§	
Defendant Below-	§	No. 222, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. Nos. IN03-11-0376-0378
	§	IN03-11-0600
Plaintiff Below-	§	
Appellee.	§	

Submitted: November 18, 2004

Decided: January 7, 2005

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

ORDER

This 7th day of January 2005, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), appellant's counsel's motion to withdraw, the State's response thereto, and appellant's counsel's reply,¹ it appears to the Court that:

(1) The defendant-appellant, Walter C. Goodson, was found guilty by a Superior Court jury of Misuse of Prisoner Mail, Criminal Contempt, Harassment, and Criminal Contempt of a Domestic Violence Protection Order. He was sentenced to a total of 3 years and 6 months incarceration at Level V, to be

¹ On November 8, 2004, this Court directed appellant's counsel to file a reply to the State's response.

followed by a total of 2 years of Level III probation.² This is Goodson's direct appeal.

(2) Goodson's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). 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.³

(3) Goodson's counsel asserted that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Goodson's counsel informed Goodson of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Goodson was also informed of his right to supplement his attorney's presentation. Goodson responded with a brief that raised no issues for this Court's consideration. In its response, the State, laudably,

² Goodson was sentenced to 1 year at Level V on the misuse of prison mail conviction and to 6 months at Level V on the harassment conviction. Each sentence was to be followed by 6 months of Level III probation.

³ *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).

conceded that it was a violation of double jeopardy to convict Goodson of both misuse of prison mail and the lesser-included offense of harassment and that the harassment conviction, therefore, should be reversed. In a reply filed at the request of this Court, Goodson's counsel agreed with the position taken by the State.

(4) The evidence at trial established that, in September 2003, Goodson was serving a Level V sentence at the Howard R. Young Correctional Institution. As part of its sentencing order, the Superior Court prohibited Goodson from having any contact with his estranged wife, Janet Goodson. Previously, on February 21, 2003, the Family Court had issued an order for protection from abuse, which prohibited Goodson from having any contact with his wife for a period of one year.

(5) While serving his sentence, Goodson wrote a letter postmarked September 30, 2003, to his wife's roommate, Vivienne Herrero. The envelope was addressed to "The Dyke Vivienne." The letter was filled with profanity and threats concerning Herrero's relationship with Janet Goodson and contained veiled messages to Janet Goodson. The contents of the letter formed the basis for the criminal charges against Goodson.

(6) A defendant may not be convicted of more than one offense if one offense is included in the other.⁴ An offense is so included when "[i]t is

⁴ Del. Code Ann. tit. 11, § 206(a) (1) (2001).

established by the proof of the same or less than all the facts required to establish the commission of the offense charged”⁵

(7) In order to convict Goodson of misuse of prison mail, the prosecution had to prove, first, that Goodson was a person in the custody of the State of Delaware within a detention facility and, second, that he intentionally communicated by mail with Herrero in a manner likely to cause inconvenience, annoyance or alarm.⁶ In order to convict Goodson of harassment, the prosecution had to prove that Goodson intentionally communicated with Herrero by mail in a manner likely to cause annoyance or alarm.⁷ These two charges are essentially identical, except that the charge of misuse of prison mail requires that the perpetrator be a prison inmate. We conclude that, under the specific facts of this case, harassment is a lesser-included offense of misuse of prison mail and that Goodson’s conviction of both offenses simultaneously violates double jeopardy.⁸ Goodson’s harassment conviction must, therefore, be reversed.

(8) This Court has reviewed the record carefully and has concluded that, apart from the double jeopardy issue identified above, Goodson’s appeal is without merit and devoid of arguably appealable issues.

⁵ Del. Code Ann. tit. 11, § 206(b) (1) (2001).

⁶ Del. Code Ann. tit. 11, § 1260(1) (2001).

⁷ Del. Code Ann. tit. 11, § 1311(a) (2) (2001).

⁸ *Poteat v. State*, 840 A.2d 599, 602-03 (Del. 2003).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED IN PART and REVERSED IN PART. This matter is REMANDED to the Superior Court for entry of a corrected sentencing order that vacates Goodson's harassment conviction and the sentence therefor, in accordance with this Order. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice