

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DUANE ROLLINS,	§	
	§	No. 314, 2007
Defendant Below,	§	
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware in and
	§	for New Castle County
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0606006060
Appellee.	§	

Submitted: December 26, 2007

Decided: March 10, 2008

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 10th day of March 2008, 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, it appears to the Court that:

(1) In March 2007, a Superior Court jury convicted the defendant, Duane Rollins, of trafficking in cocaine, manufacturing marijuana and resisting arrest. Rollins was sentenced to a total of sixteen years at Level V suspended after six years for six months at Level IV followed by Level III probation. This is Rollins’ direct appeal.

(2) Rollins' counsel on appeal (“Counsel”) has filed a brief and a motion to withdraw pursuant to Rule 26(c).¹ Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues.

(3) When considering a Rule 26(c) brief and motion to withdraw, the Court must be satisfied that the defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.² The Court must also 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) Counsel has certified that he informed Rollins of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the Rule 26(c) brief and the appendix to the brief.⁴ Counsel also informed Rollins of his right to respond to the motion to withdraw and to supplement the brief.

¹ It appears from the record that Rollins was represented by a different assistant public defender at trial.

² *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).

³ *Id.*

⁴ The appendix appears to include relevant portions of the trial transcript.

(5) Rollins has submitted two issues for the Court's consideration.⁵ First, Rollins claims that his trial counsel failed to file a motion to suppress, failed to object to the admission of illegally seized evidence, and failed to file a motion for judgment of acquittal. It is well-settled, however, that the Court does not consider a claim of ineffective assistance of counsel that is raised for the first time on direct appeal.⁶ As a result, the Court will not consider Rollins' claim of ineffective assistance of counsel.

(6) Second, Rollins claims that the search warrant was defective because it contained "knowingly false" information. Rollins acknowledges that his trial counsel "did not formally object" to the search warrant, but he requests that the Court review the claim for plain error.⁷

(7) Plain error is error that is apparent on the face of the record.⁸ In this case, in the absence of a defense motion to suppress and a pretrial suppression hearing, there is not an adequate record upon which to conduct

⁵ Rollins' submission was included in the brief in accordance with Rule 26(c)(iii). Rollins' "reply brief" filed on December 26, 2007 was forwarded to Counsel.

⁶ *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

⁷ The record reflects that Rollins, pretrial, filed a motion for appointment of new counsel based on trial counsel's refusal to file a motion to suppress. By order dated December 22, 2006, the Superior Court, finding no basis "to intervene in the attorney-client relationship," denied Rollins' motion for new counsel.

⁸ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

appellate review of Rollins' claim that the search warrant contained "knowingly false" information.⁹

(8) The Court has concluded that Rollins' appeal is wholly without merit and devoid of any arguably appealable issue. Having carefully reviewed the record, we are satisfied that Counsel made a conscientious effort to examine the record and properly determined that Rollins 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.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁹ See *Franks v. State*, 398 A.2d 783, 786 (Del. 1979) (holding that attacks on the veracity of a search warrant affidavit must be made by pretrial motion filed in strict compliance with Superior Court Criminal Rule 41(f)).