IN THE SUPREME COURT OF THE STATE OF DELAWARE

DUVELL J. NIXON,	§	
	§	No. 177, 2007
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 0604006464
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: April 25, 2008
Decided: May 19, 2008

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

O R D E R

This 19th day of May 2008, upon consideration of the appellant's opening brief pursuant to Supreme Court 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, Duvell J. Nixon, entered a plea of guilty to Robbery in the First Degree, Assault in the Second Degree, Aggravated Menacing, and Assault in the Third Degree. He was sentenced on the robbery conviction to 25 years of Level V incarceration, to be suspended after 6 years for decreasing levels of supervision. On the second-degree assault conviction, he was sentenced to 8 years at Level V, to be suspended after 2 years for probation. On the aggravated menacing conviction, he was sentenced to 5 years at Level V, to be suspended after 15 months for probation. Finally, on the third-degree assault conviction, Nixon was sentenced to 1

year at Level V, to be suspended after 6 months for probation. This is Nixon's direct appeal.

(2) Nixon'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.[1]

(3) Nixon's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Nixon's counsel informed Nixon of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete transcript. Nixon also was informed of his right to supplement his attorney's presentation. Nixon has raised one issue for this Court's consideration. The State has responded to Nixon's arguments and the position taken by Nixon's counsel and has moved to affirm the Superior Court's judgment.

(4) Nixon raises one issue for this Court's consideration. He claims that the Superior Court should not have sentenced him for Robbery in the First Degree because

[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).

he did not commit that crime. Rather, he argues, he should have been sentenced for Robbery in the Second or Third Degree.

(5) The record reflects that Nixon entered a plea of guilty to Robbery in the First Degree. The transcript of the plea colloquy reflects that the plea was entered knowingly, intelligently, and voluntarily. As such, Nixon has waived any objection to alleged defects or errors occurring prior to the entry of the plea.[2] Moreover, in the absence of any evidence that the sentence imposed by the Superior Court was illegal or that it constituted an abuse of discretion, it will not be disturbed by this Court.[3]

(6) This Court has reviewed the record carefully and has concluded that Nixon's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Nixon's counsel has made a conscientious effort to examine the record and has properly determined that Nixon 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/Henry duPont Ridgely
Justice

[2] *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).
[3] *Weber v. State*, 655 A.2d 1219, 1221 (Del. 1995).