

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEWIS FREDERICK,	§
	§
Defendant Below-	§ No. 81, 2005
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID. 0404022324
Plaintiff Below-	§
Appellee.	§

Submitted: June 20, 2005

Decided: July 25, 2005

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

**ORDER**

This 25th day of July 2005, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Lewis Frederick, was convicted following a Superior Court bench trial of aggravated menacing, offensive touching, and several weapon offenses. The Superior Court sentenced Frederick to a total of three years incarceration followed by a period of probation. This is Frederick's direct appeal.

(2) Frederick's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Frederick's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Frederick's attorney informed him of the provisions of Rule 26(c) and provided Frederick with a copy of the motion to withdraw and the accompanying brief. Frederick also was informed of his right to supplement his attorney's presentation. Frederick has raised two issues for this Court's consideration. The State has responded to the position taken by Frederick's counsel, as well as the issues raised by Frederick, and has moved to affirm the Superior 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: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this 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.<sup>1</sup>

(4) Frederick has raised two points for the Court's consideration. First, he asserts that the razor blade he held during the crime was only three

---

<sup>1</sup>*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).

inches long and could be purchased by anyone at a drug store. Therefore, he argues, it legally could not be a deadly weapon. Second, Frederick asserts that the testimony of the victim was not credible and was insufficient to convict him.

(5) We find no merit to either contention. Contrary to Frederick's first argument, Section 222(5) of Title 11 of the Delaware Code expressly defines "deadly weapon" to include a "razor."<sup>2</sup> With respect to his second contention, the credibility of the victim's testimony in this case was a matter for the trial judge to determine, in his sole discretion.<sup>3</sup> Frederick's assertion that the victim should not have been believed is insufficient to warrant overturning the verdict in this case.<sup>4</sup>

(6) This Court has reviewed the record carefully and has concluded that Frederick's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Frederick's counsel has made a conscientious effort to examine the record and the law and has properly determined that Frederick could not raise a meritorious claim in this appeal.

---

<sup>2</sup> Cf. *Taylor v. State*, 679 A.2d 449, 453 (Del. 1996) (holding that even common household items may be "deadly weapons" depending on their usage).

<sup>3</sup> *Pryor v. State*, 453 A.2d 98, 99 (Del. 1982).

<sup>4</sup> *See id.*

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/ Randy J. Holland  
Justice