

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THEODORE DAVIS,	§
	§ No. 502, 2007
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0611000933
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 29, 2008

Decided: March 7, 2008

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

ORDER

This 7th day of March 2008, upon consideration of the appellant's 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, Theodore Davis, was found guilty by a Superior Court jury of Unlawful Sexual Contact in the Second Degree. He was sentenced to 2 years of Level V incarceration, to be suspended after 8 months for 1 year and 4 months at Level III probation. Davis also was designated as a Tier II sex offender. This is Davis' direct appeal.

(2) Davis' counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). Davis' counsel asserts that, based upon a complete

and careful examination of the record, there are no arguably appealable issues. By letter, Davis' attorney informed him of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief. Davis also was informed of his right to supplement his attorney's presentation. Davis has not raised any issues for this Court's consideration. The State has responded to the position taken by Davis' counsel 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 to determine whether the appeal is totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.¹

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

¹ *Person 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).

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/ Jack B. Jacobs
Justice