

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROGER C. BARLOW,	§
	§
Defendant Below-	§ No. 290, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0608018111A
Plaintiff Below-	§
Appellee.	§

Submitted: December 26, 2007

Decided: March 14, 2008

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

**ORDER**

This 14<sup>th</sup> day of March 2008, 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) A Superior Court jury convicted the defendant-appellant, Roger Barlow, of trafficking in cocaine, criminal impersonation, and four counts of endangering the welfare of a child. This is Barlow's direct appeal.

(2) Barlow's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Counsel asserts, based upon a complete and careful examination of the record, that there are no arguably appealable issues. By letter, Barlow's attorney informed him of the provisions of Rule

26(c) and provided Barlow with a copy of the motion to withdraw and the accompanying brief. Barlow also was informed of his right to supplement his attorney's presentation. The State has responded to Barlow's contentions, as well as the position taken by Barlow's 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 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) Barlow's sole issue on appeal, raised through his counsel, challenges the credibility of the testimony of three witnesses who testified at trial. The jury, however, is solely responsible for determining the credibility of witnesses and was free to accept the witness testimony challenged by Barlow in this appeal.<sup>2</sup> On this record, we find sufficient competent

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<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).

<sup>2</sup> *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982).

evidence from which any rational juror, viewing the facts in the light most favorable to the State, could find Barlow guilty beyond a reasonable doubt.<sup>3</sup>

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

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>3</sup> *Word v. State*, 801 A.2d 927, 929 (Del. 2002) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).