

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE R. BENSON,	§
	§
Defendant Below-	§ No. 46, 2003
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. IN01-08-1568, -1569,
	§ -1571, -1572, and IN01-08-3095
Plaintiff Below-	§
Appellee.	§

Submitted: June 26, 2003

Decided: July 18, 2003

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

ORDER

This 18th day of July 2003, 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, Tyrone R. Benson, was convicted by a Superior Court jury of possession of a firearm during the commission of a felony, possession of a deadly weapon by a person prohibited, aggravated menacing, and two counts of offensive touching. The victim, who testified against Benson at trial, was his ex-girlfriend. The Superior Court sentenced Benson to a total period of seven years incarceration, to be suspended after five years minimum mandatory. This is Benson's direct appeal.

(2) Benson's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Benson's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Benson's attorney informed him of the provisions of Rule 26(c) and provided Benson with a copy of the motion to withdraw and the accompanying brief. Benson also was informed of his right to supplement his attorney's presentation. Benson has not raised any issues for this Court's consideration. The State has responded to the position taken by Benson's counsel and has moved to affirm the Superior Court's decision.

(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.*

* *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).

(4) This Court has reviewed the record carefully and has concluded that Benson's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Benson's counsel has made a conscientious effort to examine the record and the law and has properly determined that Benson 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/ Randy J. Holland
Justice