

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MELVIN BARNER,	§	
	§	No. 186, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0508002408
Plaintiff Below,	§	0305000674
Appellee.	§	

Submitted: January 23, 2009

Decided: April 9, 2009

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

**ORDER**

This 9<sup>th</sup> day of April 2009, upon consideration of the brief and motion to withdraw filed by the appellant’s counsel (“Counsel”) pursuant to Supreme Court Rule 26(c) (“Rule 26(c)”), the State’s response, and the supplemental memoranda filed by the State and Counsel, it appears to the Court that:

(1) On June 20, 2003, the appellant, Melvin Barner, pled guilty to drug possession and was sentenced to two years at Level V suspended for Level III probation. On September 14, 2005, the Superior Court adjudged Barner guilty of violation of probation (VOP) and sentenced him to two years at Level V suspended after nine months for fifteen months at Level III probation. On March 14, 2008, the Superior Court adjudged Barner guilty of VOP and sentenced him, effective

December 4, 2007, to two years at Level V suspended after successful completion of Levels V and IV programs for Level III probation. This appeal followed.

(2) 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. First, the Court must be satisfied that Counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.<sup>1</sup> Second, the Court must conduct its own review of the record and determine whether the appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>2</sup>

(3) Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Counsel informed Barner of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief and appendix. Counsel also informed Barner of his right to supplement the brief and to respond to the motion.

(4) In his written submission for the Court's consideration, Barner alleged that the March 14, 2008 sentence did not credit him with time served at Level V. When responding to Barner's claim, the State agreed with Barner's position but suggested that disposition of the claim should be deferred pending a review of

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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> *Id.*

sentence proceedings that was scheduled for October 2, 2008, in the Superior Court. Thereafter, in supplemental memoranda addressing the issue, both Counsel and the State advised the Court that Barner's concern was resolved by the sentence imposed on October 2, 2008.<sup>3</sup> Barner did not respond to the Court's request for his further position on the issue.

(5) The Court has reviewed the record carefully and has concluded that Barner's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort to examine the record and properly determined that Barner 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/ Myron T. Steele  
Chief Justice

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<sup>3</sup> It appears from the record that on October 2, 2008, the Superior Court sentenced Barner on the March 14, 2008 VOP conviction to one year at Level V, effective December 4, 2007.