

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JUSTIN FOREMAN,	§
	§ No. 83, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0802018812
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 13, 2009

Decided: September 9, 2009

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

ORDER

This 9th day of September 2009, upon consideration of the appellant's opening 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, Justin Foreman, was found guilty by a Superior Court jury of Rape in the Second Degree, Rape in the Fourth Degree, and Unlawful Sexual Contact in the Second Degree. He was sentenced to a total of 21 years of Level V incarceration, to be suspended after 10 years for decreasing levels of supervision. This is Foreman's direct appeal.

(2) Foreman’s counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Foreman’s counsel asserts that, based upon a complete and careful examination of the record and the law, there are no arguably appealable issues. By letter, Foreman’s attorney informed him of the provisions of Rule 26(c) and provided Foreman with a copy of the motion to withdraw and the accompanying brief. Foreman also was informed of his right to supplement his attorney’s presentation. Foreman has not raised any issues for this Court’s consideration. The State has responded to the position taken by Foreman’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.¹

(4) This Court has reviewed the record carefully and has concluded that Foreman’s appeal is wholly without merit and devoid of any arguably

¹ *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).

appealable issue. We also are satisfied that Foreman's counsel has made a conscientious effort to examine the record and the law and has properly determined that Foreman 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