

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| CECIL R. BROWNE, | § |
| | § No. 281, 2009 |
| Defendant Below- | § |
| Appellant, | § |
| | § Court Below—Superior Court |
| v. | § of the State of Delaware |
| | § in and for New Castle County |
| STATE OF DELAWARE, | § Cr. ID No. 9809004025 |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: September 16, 2009
Decided: September 17, 2009

Before **HOLLAND, JACOBS,** and **RIDGELY,** Justices

ORDER

This 17th day of September 2009, 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, Cecil R. Browne, was found to have committed a violation of probation (“VOP”) with respect to sentences imposed for multiple convictions of Unlawful Sexual Intercourse in the Third Degree and Attempted Unlawful Sexual Intercourse in the Third Degree. He was re-sentenced on one of the convictions of Unlawful Sexual Intercourse in the Third Degree to nine years at Level V, to be suspended after successful completion of the Key Program, to be followed by

decreasing levels of supervision. The suspended sentences for the four remaining convictions were re-imposed. This is Browne's direct appeal from the finding of a VOP.

(2) Browne's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Browne's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Browne's counsel informed him of the provisions of Rule 26(c) and provided Browne with a copy of the motion to withdraw and the accompanying brief. Browne also was informed of his right to supplement his counsel's presentation. Browne has not presented any issues for this Court's consideration. The State has responded to the position taken by Browne'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 arguably appealable issues; 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 Browne's appeal is wholly without merit and devoid of any arguably appealable issues. We also are satisfied that Browne's counsel has made a conscientious effort to examine the record and the law and has properly determined that Browne 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

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).