

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAMIR A. HANIF,	§
	§ No. 293, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID Nos. 0709019777
	§ 0404013676
Plaintiff Below-	§
Appellee.	§

Submitted: October 19, 2009

Decided: October 26, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 26th day of October 2009, upon consideration of the appellant’s brief filed 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, Shamir A. Hanif, was found to have committed violations of probation (“VOPs”) in connection with his 2004 and 2007 convictions of Driving Under the Influence (“DUI”). On the first VOP, he was sentenced to 18 months at Level V, to be suspended for 1 year at the Crest Program, with the balance of his Level V sentence to be suspended upon successful completion of the program. On the second VOP, he was sentenced to 4 years at Level V incarceration, to be suspended for 18

months at Crest Aftercare. This is Hanif's direct appeal of his VOP sentences.

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

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).

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