

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PASCUAL TERCERO,	§	
	§	No. 227, 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. 0803013003A
	§	0803013003B
Plaintiff Below-	§	0804002368
Appellee.	§	

Submitted: October 22, 2009
Decided: November 3, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 3rd day of November 2009, upon consideration of the appellant’s opening 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, Pascual Tercero, was found guilty by a Superior Court jury of Endangering the Welfare of a Child and Unlawful Sexual Contact in the First Degree. Tercero also pleaded *nolo contendere* to Unlawful Sexual Contact in the Second Degree and Rape in the Fourth Degree. He was sentenced to a total of 22 years incarceration at Level V, to

be suspended after 12 years for 10 years of probation. This is Tercero's direct appeal of his convictions.

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

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