

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEREMY CUNNINGHAM,	§
	§
Defendant Below-	§ No. 326, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0812000249
Plaintiff Below-	§
Appellee.	§

Submitted: October 29, 2009  
Decided: November 30, 2009

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

**ORDER**

This 30<sup>th</sup> day of November 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, Jeremy Cunningham (Cunningham), pled guilty on May 5, 2009 to third degree burglary and second degree conspiracy. The Superior Court immediately sentenced Cunningham to a period of five years at Level V incarceration, to be suspended immediately for six months at Level IV home confinement, followed by one year of probation. This is Cunningham's direct appeal.

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

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\* *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 Cunningham's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Cunningham's counsel has made a conscientious effort to examine the record and the law and has properly determined that Cunningham 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