

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WENDELL KING,	§	
	§	No. 130, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0709027494
Appellee.	§	

Submitted: April 7, 2010

Decided: May 13, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 13<sup>th</sup> day of May 2010, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, the State's response, and the Superior Court's report on remand, it appears to the Court that:

(1) On November 21, 2008, a Superior Court jury convicted the appellant, Wendell King, of one count each of Rape in the First Degree and Unlawful Sexual Contact in the First Degree. King was sentenced to a total of twenty-one years at Level V suspended after eighteen years for three years at Level IV suspended after six months for two years at Level III probation. This is King's direct appeal.

(2) On appeal, King’s counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) (“Rule 26(c”).<sup>1</sup> King’s counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues.

(3) Counsel provided King with a copy of the motion to withdraw, and the Rule 26(c) brief and appendix.<sup>2</sup> By letter, counsel advised King that he had a right to supplement the brief and to file a response to the motion to withdraw.

(4) In response to counsel’s letter, King submitted two issues for this Court’s consideration. The State then filed a response to King’s issues and the Rule 26(c) brief and moved to affirm the judgment of the Superior Court.

(5) The standard and scope of review of a motion to withdraw and an accompanying brief under Rule 26(c) is two-fold. First, the Court must be satisfied that King’s counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.<sup>3</sup> Second, the Court must conduct its own review of the record and determine

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<sup>1</sup> It appears that King was represented by a different assistant public defender in the Superior Court.

<sup>2</sup> The appendix includes a copy of the trial transcript and sentencing.

<sup>3</sup> *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).

whether the appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>4</sup>

(6) King's first issue is that there is an anomaly in the record that should be resolved on remand. King's second issue is that his trial counsel was ineffective in several respects.

(7) King's first issue is moot. By order dated February 25, 2010, the Court remanded this case to the Superior Court to resolve the anomaly in the record noted by King. By report dated March 12, 2010, the Superior Court issued its findings and conclusions and a corrected transcript.

(8) Following return of the case from remand, King was given an opportunity to file any additional issues that might have been prompted by the Superior Court's report on remand. King has not submitted any additional issues.

(9) The Court has not considered King's allegations of ineffective assistance of counsel. It is well-settled that the Court does not consider a claim of ineffective assistance of counsel that is raised for the first time on direct appeal.<sup>5</sup>

(10) The Court has reviewed the record carefully and has concluded that King's appeal is wholly without merit and devoid of any arguably

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<sup>4</sup> *Id.*

<sup>5</sup> *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

appealable issue. We are satisfied that King's counsel made a conscientious effort to examine the record and the law and properly determined that King 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/Henry duPont Ridgely  
Justice