

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEE S. STEPHENSON,	§
	§ No. 51, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0901008867
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 18, 2010

Decided: June 28, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 28th day of June 2010, 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) On June 12, 2009, the defendant-appellant, Lee S. Stephenson, pleaded guilty to Possession with Intent to Deliver Marijuana. He was sentenced to 5 years incarceration at Level V, to be suspended for 18 months at Level III probation. On January 5, 2010, Stephenson was found to have committed a violation of probation (“VOP”) by failing a drug test. He was re-sentenced to 5 years at Level V, to be suspended for successful

completion of the Level IV Crest Program, to be followed by 18 months of Crest Aftercare. This is Stephenson's direct appeal of his VOP sentence.

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

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 Stephenson's appeal is wholly without merit and devoid of any arguably appealable issues. We also are satisfied that Stephenson's counsel has made a conscientious effort to examine the record and the law and has properly determined that Stephenson 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/ Myron T. Steele
Chief 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).