

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HOWARD PAGE, JR.,	§	
	§	No. 116, 2010
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in
v.	§	and for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0905012699
Appellee.	§	

Submitted: June 18, 2010
Decided: August 13, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 13th day of August 2010, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26(c) (“Rule 26(c)”), his attorney’s motion to withdraw, and the State’s response, it appears to the Court that:

(1) On November 4, 2009, the appellant, Howard Page, Jr., pled *nolo contendere* to Resisting Arrest with Force or Violence. Page was sentenced to two years at Level V, suspended after six months for one year at Level III probation.

(2) On January 29, 2010, Page filed a motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). By order

dated February 9, 2010, the Superior Court denied the motion on the basis that Page's sentence was imposed pursuant to a plea agreement. This appeal followed.

(3) On appeal, Page's defense counsel ("Counsel") has filed a brief and a motion to withdraw pursuant to Rule 26(c). Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. Counsel states that he provided Page with a copy of the motion to withdraw and the accompanying brief and appendix. Counsel also asked Page to submit any issues that Page sought to raise on appeal. Page has not raised any issues for this Court's consideration. The State has responded to the position taken by Counsel and has moved to affirm the Superior Court's judgment.

(4) 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 Counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.¹ Second, the Court must conduct its own review of the record and determine whether the

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).

appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.²

(5) In this case, the Court has reviewed the record carefully and has concluded that Page's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel has made a conscientious effort to examine the record and the law and properly determined that Page 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:

Randy J. Holland
Justice

² *Id.*