

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE CARABALLO,	§
	§
Defendant Below-	§ No. 110, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0509005024
Plaintiff Below-	§
Appellee.	§

Submitted: September 10, 2010

Decided: November 3, 2010

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

ORDER

This 3rd day of November 2010, 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, Jose Caraballo (Caraballo), filed this appeal from the Superior Court's sentence on his third violation of probation. Caraballo's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Caraballo's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Caraballo's attorney informed him of the provisions of Rule 26(c) and provided Caraballo with a copy of the motion

to withdraw and the accompanying brief. Caraballo also was informed of his right to supplement his attorney's presentation. Caraballo has not raised any issues for this Court's consideration. The State has responded to the position taken by Caraballo's counsel and has moved to affirm the Superior Court's judgment.

(2) 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.*

(3) This Court has reviewed the record carefully and has concluded that Caraballo's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Caraballo's counsel has made a conscientious effort to examine the record and the law and has properly determined that Caraballo could not raise a meritorious claim in this appeal.

* *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).

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