

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY S. DORIO,	§	
	§	No. 582, 2010
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in
v.	§	and for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0909016967
Appellee.	§	

Submitted: February 7, 2011
Decided: March 29, 2011

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

ORDER

This 29th day of March 2011, 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, it appears to the Court that:

(1) On June 7, 2010, the appellant, Anthony S. Dorio, pled guilty to Assault in the First Degree, Burglary in the Second Degree, Assault in the Third Degree and Terroristic Threatening. On September 3, 2010, the Superior Court sentenced Dorio to a total of twenty-three years at Level V – two years mandatory – suspended after thirteen years for seven years at Level IV, suspended after six months for Level III probation. This appeal followed.

(2) Dorio’s appellate counsel (“Counsel”)¹ has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) (“Rule 26(c)”)². Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Dorio did not respond to Counsel’s motion to withdraw or provide any points to Counsel for the Court’s consideration.³ In the absence of any claim of error, the State has moved to affirm the Superior Court’s judgment.

(3) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims.⁴ The Court must also 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.⁵

(4) The Court has reviewed the record carefully and has concluded that Dorio’s appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort

¹ Dorio was represented by different counsel at trial.

² See Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).

³ The record reflects that Counsel provided Dorio, as required, with a copy of the motion, the brief and appendix, and a letter explaining that Dorio had a right to submit written points for the Court’s consideration. *Id.*

⁴ *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).

⁵ *Id.*

to examine the record and the law and properly determined that Dorio could not raise a meritorious claim on 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