

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE CHOURY,	§
	§ No. 79, 2011
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1005007197
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 14, 2011
Decided: August 12, 2011

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

ORDER

This 12th day of August 2011, upon consideration of the appellant’s opening 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) The defendant-appellant, Andre Choury, pleaded guilty to Kidnapping in the Second Degree and Possession of a Firearm During the Commission of a Felony. He was sentenced on the first conviction to 15 years incarceration at Level V, to be suspended for 15 years at Level IV Halfway House, in turn to be suspended after 6 months for 3 months at Level IV Home Confinement followed by 2 years at Level III probation. On the second conviction, he was sentenced to 5 years at Level V.

(2) Choury's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). Choury'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, Choury's attorney informed him of the provisions of Rule 26(c) and provided Choury with a copy of the motion to withdraw and the accompanying brief. Choury also was informed of his right to supplement his attorney's presentation. Choury has not raised any issues for this Court's consideration. The State has responded to the position taken by Choury'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) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and b) the Court must conduct its own review of the record in order 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 Choury's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Choury's counsel has made a conscientious effort

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).

to examine the record and the law and has properly determined that Choury 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