

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|------------------------------|
| MICHAEL E. DOLAN, | § |
| | § |
| Defendant Below- | § No. 94, 2002 |
| Appellant, | § |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for Sussex County |
| | § Cr.A. No. PS01-09-0445 |
| Plaintiff Below- | § Cr. ID 0109008620 |
| Appellee. | § |
| | § |

Submitted: July 8, 2002
Decided: August 12, 2002

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

ORDER

This 12th day of August 2002, 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) In February 2002, the defendant-appellant, Michael Dolan, pleaded guilty to one count of aggravated harassment. The Superior Court immediately sentenced Dolan to two years at Level V incarceration, suspended for one year and seven months at Level III probation. This is Dolan's direct appeal

(2) Dolan's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Dolan's counsel asserts that, based upon a complete and

careful examination of the record, there are no arguably appealable issues. By letter, Dolan's attorney informed him of the provisions of Rule 26(c) and provided Dolan with a copy of the motion to withdraw and accompanying brief. Dolan also was informed of his right to supplement his attorney's presentation. Dolan did not respond to his attorney. The State has responded to the position taken by Dolan's counsel and has moved to affirm the Superior Court's decision.

(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 and 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) Although Dolan did not respond to his attorney's motion to withdraw, we note that Dolan attempted to file a pro se brief with this Court prior to the filing of his attorney's Rule 26(c) brief. In his pro se brief, Dolan's only claim appears to be that his former employer, the Department of Correction, coerced him into pleading guilty. The State asserts that Dolan's claim is unsupported by the record.

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).

We agree. At the guilty plea hearing, the trial court inquired into Dolan's understanding of his plea agreement and specifically asked Dolan whether anyone had forced him to enter a guilty plea. Dolan answered no. Dolan's signed plea agreement also stated that no one had threatened or forced Dolan to enter his plea. In the absence of any evidence to the contrary, Dolan is bound by these sworn statements.²

(5) This Court has reviewed the record carefully and has concluded that Dolan's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Dolan's counsel has made a conscientious effort to examine the record and the law and has properly determined that Dolan 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
Justice

² See *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).