

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE AVILA,	§
	§ No. 320, 2014
Defendant Below,	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 1312008934
Plaintiff Below,	§
Appellee.	§

Submitted: November 3, 2014
Decided: December 11, 2014

Before **STRINE**, Chief Justice, **RIDGELY**, and **VALIHURA**, Justices.

ORDER

This 11th day of December 2014, 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 Avila, was convicted by a Superior Court jury in June 2014 of Driving Under the Influence (third offense). The Superior Court sentenced him to a total period of five years at Level V incarceration to be suspended after serving two years followed by decreasing levels of supervision. This is Avila's direct appeal.

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

complete and careful examination of the record, there are no arguably appealable issues. By letter, Avila's attorney informed him of the provisions of Rule 26(c) and provided Avila with a copy of the motion to withdraw and the accompanying brief. Avila also was informed of his right to supplement his attorney's presentation. Avila did not respond with any points for the Court's consideration.

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

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).

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/ Karen L. Valihura
Justice