

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                               |
|--------------------|-------------------------------|
| MICHAEL DWYER,     | §                             |
|                    | § No. 614, 2014               |
| Defendant Below-   | §                             |
| Appellant,         | §                             |
|                    | §                             |
| v.                 | § Court Below—Superior Court  |
|                    | § of the State of Delaware,   |
| STATE OF DELAWARE, | § in and for Sussex County    |
|                    | § Cr. ID Nos. 1308006490A and |
| Plaintiff Below-   | § 1308006490B                 |
| Appellee.          | §                             |

Submitted: May 13, 2015

Decided: June 10, 2015

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

**ORDER**

This 10<sup>th</sup> day of June 2015, 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) On July 30, 2014, a Superior Court jury found the defendant-appellant, Michael Dwyer, guilty of one count of Theft of a Firearm. On August 27, 2014, a different jury convicted Dwyer of Possession of a Firearm by a Person Prohibited ("PFPP"). On October 3, 2014, after a presentence investigation, the Superior Court sentenced Dwyer as a habitual offender on both charges to a total period of nine years at Level V

incarceration, followed by a period of probation. This is Dwyer's direct appeal.

(2) Dwyer's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Dwyer's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Dwyer's attorney informed him of the provisions of Rule 26(c) and provided Dwyer with a copy of the motion to withdraw and the accompanying brief. Dwyer also was informed of his right to supplement his attorney's presentation. Dwyer has not raised any issues for this Court's consideration. The State has responded to the position taken by Dwyer'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) 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.\*

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\* *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).

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