

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEREK BURBAGE,	§	
	§	No. 255, 2015
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware
v.	§	
	§	Cr. ID No. 1406022376
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 23, 2015
Decided: March 1, 2016

Before **STRINE**, Chief Justice; **VAUGHN**, and **SEITZ**, Justices.

ORDER

This 1st day of March 2016, having considered the no-merit brief and motion to withdraw filed by the appellant’s counsel and the response filed by the State of Delaware, it appears to the Court that:

(1) On February 25, 2015, after a three-day trial, a jury found the appellant, Derek Burbage, guilty of five counts of Reckless Endangering in the Second Degree, four counts of Assault in the Second Degree, and one count of Criminal Mischief. After a presentence investigation, the Superior Court sentenced Burbage to a total of twenty-seven years at Level V, suspended after eight years for two years at Level IV, suspended after six months for concurrent terms of Level III and II probation. This is Burbage’s direct appeal.

(2) On appeal, Burbage’s appellate counsel (“Counsel”)¹ has filed a no-merit brief and a motion to withdraw under Supreme Court Rule 26(c).² Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Counsel represents that he provided Burbage with a copy of the motion to withdraw, Rule 26, and the no-merit brief in draft form, and a letter requesting that Burbage send him written points for the Court’s consideration. Burbage did not submit any points for the Court’s consideration. The State has responded to the Rule 26(c) brief and 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 the appellant’s counsel has made a conscientious examination of the record and the law for arguable claims.³ Also, the Court must conduct its own review of the record and determine “whether the appeal is indeed so frivolous that it may be decided without an adversary presentation.”⁴

¹ Burbage was represented by different counsel in the Superior Court.

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

³ *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 *Penson v. Ohio*, 488 U.S. at 81.

(4) In this case, having conducted “a full examination of all the proceedings” and having found “no nonfrivolous issue for appeal,”⁵ the Court concludes that Burbage’s appeal “is wholly without merit.”⁶ The Court is satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Burbage 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/ Collins J. Seitz, Jr.
Justice

⁵ *Id.* at 80.

⁶ *Supra* note 2.