

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                              |
|--------------------|------------------------------|
| KENNETH SWANSON,   | §                            |
|                    | § No. 114, 2017              |
| Defendant Below-   | §                            |
| Appellant,         | §                            |
|                    | §                            |
| v.                 | § Court Below—Superior Court |
|                    | § of the State of Delaware   |
| STATE OF DELAWARE, | §                            |
|                    | § Cr. ID 1604003093 (N)      |
| Plaintiff Below-   | §                            |
| Appellee.          | §                            |

Submitted: August 7, 2017  
Decided: August 21, 2017

Before **VAUGHN, SEITZ, and TRAYNOR**, Justices.

**ORDER**

This 21<sup>st</sup> day of August 2017, upon consideration of the appellant’s Supreme Court Rule 26(c) brief, his attorney’s motion to withdraw, and the State’s response, it appears to the Court that:

(1) In November 2016, a Superior Court jury found the appellant, Kenneth Swanson, guilty of Drug Dealing and related offenses. The Superior Court sentenced him as a habitual offender to a total unsuspended sentence of five years plus sixty days at Level V incarceration followed by probation. This is Swanson’s direct appeal.

(2) Swanson’s counsel on appeal has filed a brief and a motion to withdraw under Rule 26(c). Swanson’s counsel asserts that, after a complete

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

(4) This Court has reviewed the record carefully and has concluded that Swanson's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Swanson's counsel has made a

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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).

conscientious effort to examine the record and the law and has properly determined that Swanson 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/ Collins J. Seitz, Jr.  
Justice