

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT SMITH,	§
	§ No. 512, 2017
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 1602012206 (N)
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: April 11, 2018

Decided: May 17, 2018

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

**ORDER**

This 17<sup>th</sup> day of May 2018, upon consideration of the appellant’s Supreme Court Rule 26(c) brief, the State’s response, and the record below, it appears to the Court that:

(1) On August 30, 2017, the appellant, Robert Smith, pled guilty, but mentally ill to Murder in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. On November 2, 2017, the Superior Court sentenced Smith as follows: (i) for Murder in the First Degree, life imprisonment; and (ii) for Possession of a Deadly Weapon During the Commission of a Felony, twenty-five years of Level V incarceration, followed by six months of Level IV probation. Smith was to be held at the Delaware Psychiatric Center for evaluation,

treatment, and counseling until the Delaware Psychiatric Center informed the Superior Court that he could be returned to a Department of Correction facility. This is Smith's direct appeal.

(2) On appeal, Smith's counsel ("Counsel") filed a brief and a motion to withdraw under Supreme Court Rule 26(c). Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Counsel informed Smith of the provisions of Rule 26(c) and provided Smith with a copy of the motion to withdraw and the accompanying brief.

(3) Counsel also informed Smith of his right to identify any points he wished this Court to consider on appeal. Smith has not raised any issues for this Court's consideration. The State has responded to the Rule 26(c) brief and has moved to affirm the Superior Court's judgment.

(4) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), this Court must: (i) be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (ii) 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.<sup>1</sup>

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<sup>1</sup> *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *Leacock v. State*, 690 A.2d 926, 927-28 (Del. 1996).

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

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Karen L. Valihura  
Justice