

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMAR MCELDERRY,	§
	§ No. 619, 2018
Defendant Below,	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
STATE OF DELAWARE,	§
	§ Cr. ID 1804003383 (N)
Plaintiff Below,	§
Appellee.	§

Submitted: May 3, 2019
Decided: June 17, 2019

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

ORDER

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) On October 8, 2018, the appellant, Lamar McElderry, pleaded guilty to one count of aggravated possession of cocaine. The Superior Court deferred sentencing. On November 30, 2018, the Superior Court granted the State’s motion to declare McElderry a habitual offender and sentenced McElderry to five years of Level V incarceration, suspended after two years for decreasing levels of supervision. This is McElderry’s direct appeal.

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

examination of the record, there are no arguably appealable issues. McElderry's attorney informed him of the provisions of Rule 26(c) and provided McElderry with a copy of the motion to withdraw and the accompanying brief. Counsel informed McElderry of his right to supplement his attorney's presentation. McElderry did not file a written response raising any issues for this Court's consideration. The State has responded to the position taken by McElderry'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.¹

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

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).

effort to examine the record and the law and has properly determined that McElderry 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/ Gary F. Traynor
Justice