

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERMAINE BARNHART,	§
	§
Defendant Below-	§ No. 219, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN01-07-1962
Plaintiff Below-	§ Cr. ID 0106005826
Appellee.	§

Submitted: July 23, 2003  
Decided: August 4, 2003

Before **HOLLAND, BERGER, and STEELE**, Justices.

**ORDER**

This 4<sup>th</sup> day of August 2003, 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) In April 2003, a Superior Court jury found the defendant-appellant, Jermaine Barnhart, guilty of one count of assault in a detention facility and not guilty of a second similar count. Correctional officers testified at trial that, while incarcerated, Barnhart spit on and bit a correctional officer. Barnhart did not testify. The Superior Court sentenced Barnhart to five years at Level V incarceration to be suspended after three years for decreasing levels of supervision. This is Barnhart's direct appeal.

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

(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 Barnhart's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Barnhart's counsel has made a conscientious effort to examine the record and the law and has properly determined that Barnhart 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/ Carolyn Berger  
Justice