

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE HACKETT,	§
	§
Defendant Below-	§ No. 222, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN99-01-1314W and
Plaintiff Below-	§ -1315W
Appellee.	§

Submitted: November 1, 2001
Decided: November 14, 2001

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

ORDER

This 14th day of November 2001, 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) The defendant-appellant, Andre Hackett, was convicted by a Superior Court jury of delivery of cocaine and possession of cocaine within 1000 feet of a school. The Superior Court sentenced Hackett on both charges to a total of thirteen years at Level V incarceration, suspended after five years for decreasing levels of supervision. At trial, Hackett's defense counsel attempted to raise reasonable doubt by challenging the undercover

police officer's identification of Hackett and suggesting that Hackett had been mistaken for his brother. This is Hackett's direct appeal.

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

(4) This Court has reviewed the record carefully and has concluded that Hackett's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Hackett's counsel has made a conscientious effort to examine the record and the law and has properly determined that Hackett 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/ E. Norman Veasey
Chief Justice

**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).