

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK McDONALD,	§	
	§	No. 275, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1209014218
Appellee.	§	

Submitted: September 4, 2013  
Decided: November 6, 2013

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 6<sup>th</sup> day of November 2013, upon careful consideration of the appellant's brief pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response, it appears to the Court that:

(1) After a three-day trial in March 2013, a Superior Court jury convicted the appellant, Mark McDonald, of Attempted Felony Theft, Conspiracy in the Second Degree, and Criminal Trespass in the Third Degree. On May 16, 2013, after a presentence investigation, McDonald was declared a habitual offender on the attempted felony theft conviction and was sentenced to four years at Level V imprisonment and ordered to complete the Key and Greentree Programs while at Level V. For second degree conspiracy, McDonald was sentenced to two years at

Level V suspended for one year at Level IV Crest suspended, upon successful completion, for six months at Level III Crest Aftercare. For third degree criminal trespass, McDonald received a suspended \$100 fine. This is McDonald's direct appeal.

(2) McDonald's appellate counsel, (hereinafter "Counsel"),<sup>1</sup> has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) asserting that there are no arguably appealable issues.<sup>2</sup> McDonald, through Counsel, has submitted several claims of ineffective assistance of trial counsel for the Court's consideration.<sup>3</sup> The State has responded to McDonald's claims and has requested that the judgment of the Superior Court be affirmed.

(3) It is well-settled that this Court does not consider ineffective assistance of counsel claims that are raised for the first time on direct appeal.<sup>4</sup> Absent a full adjudication of a claim by the Superior Court, there is no adequate record for this Court to review.<sup>5</sup> In this case, because McDonald's ineffective counsel claims were not considered by the Superior Court, we decline to consider the claims in this appeal.

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<sup>1</sup> McDonald was represented by different counsel at trial.

<sup>2</sup> See Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).

<sup>3</sup> *Id.*

<sup>4</sup> *Collins v. State*, 420 A.2d 170, 177 (Del, 1980).

<sup>5</sup> *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986).

(4) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims by conducting its own review of the record to determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>6</sup> In McDonald's case, having conducted an independent review of the record, we are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that McDonald could not raise a meritorious claim on 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/ Henry duPont Ridgely  
Justice

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<sup>6</sup> *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).