

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRADLEY M. O'NEAL,	§	
	§	No. 320, 2002
Defendant Below,	§	
Appellant,	§	Court Below-Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in Cr.
	§	ID No. 0111014578.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 12, 2002

Decided: October 15, 2002

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

ORDER

This 15th day of October 2002, upon consideration of the appellant's brief pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On June 3, 2002, the appellant, Bradley M. O'Neal, pleaded guilty in the Superior Court to Driving While Under the Influence (fourth offense) and Driving While Suspended. O'Neal was immediately sentenced to a total of five years and thirty days at Level V incarceration, suspended after successful

completion of the Level V Short Term Key Program, for nine months at Level IV Residential Substance Abuse Treatment Program, suspended upon successful completion of the program, for two years at Level III Aftercare followed by six months at Level I supervision. This is O'Neal's direct appeal.

(2) O'Neal's counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c). O'Neal's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, O'Neal's attorney informed him of the provisions of Rule 26(c) and provided O'Neal with a copy of the motion to withdraw, the accompanying brief and the Superior Court transcript. O'Neal also was informed of his right to supplement his attorney's presentation.

(3) In a writing submitted through his counsel, O'Neal has raised several claims of ineffective assistance of counsel. The State has responded to the position taken by O'Neal's counsel, as well as to O'Neal's claims, and has moved to affirm the Superior Court's decision.

(4) 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.

First, this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims. Second, 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

(5) This Court will not consider claims of ineffective assistance of counsel that are raised for the first time on appeal.² In this case, O’Neal did not raise his ineffective assistance of counsel claims in the Superior Court. Accordingly, we will not consider the claims in this appeal.

(6) The Court has reviewed the record carefully and has concluded that O’Neal’s appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that O’Neal’s counsel made a conscientious effort to

¹*Penson v. Ohio*, 488 U.S. 75, 83 (1988) (quoting *McCoy v. Court of Appeal so Wisconsin*, 486 U.S. 429, 442 (1988)); *Anders v. California*, 386, U.S. 738, 744 (1967).

²*Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

examine the record and the law and properly determined that O'Neal 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/ Joseph T. Walsh
Justice