

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EARL F. ONEY, JR.,	§	
	§	No. 256, 2002
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County in Cr. ID
	§	Nos. 0112002428
STATE OF DELAWARE,	§	0111007315
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 26, 2002

Decided: October 10, 2002

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

ORDER

This 10th 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) In December 2001, the appellant, Earl F. Oney, Jr., was charged by Information with Robbery in the Second Degree, Theft under \$1000, Possession of Drug Paraphernalia and several traffic violations, including Failure to Stop at the Command of a Police Officer. In January 2002, Oney was indicted on charges of Robbery in the First Degree and Assault in the Second Degree. On March 18, 2002, Oney pleaded guilty to Robbery in the

First Degree, Assault in the Third Degree, Robbery in the Second Degree and Failure to Stop at the Command of a Police Officer. After a presentence investigation, Oney was sentenced to seventeen years and six months at Level V, suspended after four years, for one year at Level IV Residential Substance Abuse Treatment Program, suspended upon successful completion of the Level IV program, for six years at Level III Aftercare, followed by five years at Level III and one and one-half years at Level III to be served concurrently. This is Oney's direct appeal.

(2) On appeal, Oney's defense counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c). Oney's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Oney's counsel informed Oney of the provisions of Rule 26(c) and provided Oney with a copy of the motion to withdraw, the Rule 26(c) brief and the Superior Court transcript. Counsel also informed Oney of his right to supplement counsel's presentation. Oney did not submit any issues to his counsel for this Court's consideration. The State has responded to the position taken by Oney'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. First, the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal. Second, the 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) The Court has reviewed the record carefully and has concluded that Oney's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Oney's counsel has made a conscientious effort to examine the record and has properly determined that Oney could not raise a meritorious claim in this appeal.

* *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).

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/ Randy J. Holland
Justice