

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAYMOND SHERMAN,	§
	§
Defendant Below-	§ No. 347, 2003
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr.A. Nos. IK-01-08-0292, and
	§ IK01-10-0137, -0138, and -0141
Plaintiff Below-	§ Cr. ID 0108001427
Appellee.	§

Submitted: December 23, 2003

Decided: January 15, 2004

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

ORDER

This 15th day of January 2004, 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 January 2002, the defendant-appellant, Raymond Sherman, Jr., pled guilty to two counts of second degree assault, aggravated menacing and cruelty to animals. The Superior Court sentenced Sherman immediately to a total period of 22 years at Level V incarceration, to be suspended after serving two and a half years in prison, to be followed by eight and a half years at decreasing levels of probation supervision. Sherman did not file a direct appeal. Instead, he has filed several motions requesting modification

of his sentence. In June 2003, the Superior Court denied Sherman's most recent motion for modification of sentence on the ground that the motion had been filed more than 90 days after his sentencing. This is Sherman's appeal from that order.

(2) Sherman's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Sherman's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Sherman's attorney informed him of the provisions of Rule 26(c) and provided Sherman with a copy of the motion to withdraw and the accompanying brief. Sherman also was informed of his right to supplement his attorney's presentation. Sherman has not raised any issues for this Court's consideration. The State has responded to the position taken by Sherman'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: (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 Sherman's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Sherman's counsel has made a conscientious effort to examine the record and the law and has properly determined that Sherman 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

* *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).