

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMER SIMMONS,	§
	§
Defendant Below-	§ No. 381, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN-02-11-0929, -1558,
Plaintiff Below-	§ and -1569
Appellee.	§ Cr. ID 0211004233

Submitted: December 17, 2003

Decided: February 4, 2004

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

ORDER

This 4th day of February 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) The defendant-appellant, Lamer Simmons, was convicted by a Superior Court jury of first degree robbery, second degree assault, and possession of a deadly weapon during the commission of a felony. The Superior Court sentenced Simmons to a total period of 23 years at level V incarceration, to be suspended after serving 10 years for decreasing levels of supervision. At trial, Simmons based his defense on mistaken identification by the robbery victims. This is Simmons's direct appeal.

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

* *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).

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