

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICKY HAMBY,	§
	§
Defendant Below-	§ No. 504, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN02-12-1917
Plaintiff Below-	§
Appellee.	§

Submitted: February 5, 2004
Decided: March 1, 2004

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

ORDER

This 1st day of March 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) A Superior Court jury convicted the defendant-appellant, Ricky Hamby, of felony theft. The Superior Court sentenced Hamby to two years at Level V incarceration to be suspended after one year for decreasing levels of supervision. This is Hamby's direct appeal.

(2) Hamby's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Hamby's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By

letter sent to Hamby's two last known addresses, counsel informed Hamby of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief. Hamby also was informed of his right to supplement his attorney's presentation. Hamby did not respond with any issues for this Court's consideration. The State has responded to the position taken by Hamby'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.¹

(4) This Court has reviewed the record carefully and has concluded that Hamby's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Hamby's counsel has made a conscientious effort to examine the record and the law and has properly determined that Hamby could not raise a meritorious claim in this appeal.

¹ *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/ Myron T. Steele
Justice