

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONNELL SMACK,	§	
	§	No. 174, 2002
Defendant Below,	§	
Appellant,	§	Court Below–Superior
	§	Court of the State of Delaware,
v.	§	in and for Sussex County in
	§	Cr. ID No. 0109006984.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 4, 2002
Decided: January 8, 2003

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

ORDER

This 8th day of January, 2003, upon consideration of the appellant’s brief filed 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) After a jury trial in the Superior Court, the appellant, Donnell Smack, was found guilty of Possession of Marijuana, Possession of Marijuana within 1000 Feet of a School, and resisting arrest. The Superior Court sentenced Smack to a total of three years and six months at Level V incarceration, suspended, upon successful completion of the Level V Boot

Camp Program, for two years and six months at Level III supervision, including Boot Camp Aftercare. This appeal followed.

(2) On appeal, Smack's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is two-fold. 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 devoid of at least arguably appealable issues that it can be decided without an adversary presentation.*

(3) Smack's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Smack's counsel informed Smack of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief. Smack was also informed of his right to supplement his attorney's presentation. Smack did not submit any points for this Court to consider. The State has

* *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 428, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

responded to the position taken by Smack's counsel and has moved to affirm the Superior Court's judgment.

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