

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES W. PEEK,	§
	§
Defendant Below-	§ No. 455, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 1102000362
Plaintiff Below-	§
Appellee.	§

Submitted: April 9, 2012  
Decided: April 23, 2012

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

**ORDER**

This 23<sup>rd</sup> day of April 2012, 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 July 2011, a Superior Court jury found the defendant-appellant, James Peek, guilty of one count of insurance fraud. The Superior Court sentenced Peek to two years at Level V incarceration to be suspended immediately for one year of probation. Peek also was ordered to pay restitution to Nationwide Mutual Fire Insurance Company in the amount of \$9404. This is Peek's direct appeal.

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

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\* *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).

conscientious effort to examine the record and the law and has properly determined that Peek 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