

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN L. DICKENS,	§
	§
Defendant Below-	§ No. 576, 1999
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. N96-09-2053I
Plaintiff Below-	§ N96-09-2054I
Appellee.	§

Submitted: June 12, 2000
Decided: July 10, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 10th day of July 2000, 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) The defendant-appellant, Kevin L. Dickens, filed this appeal from a November 2, 1999 order of the Superior Court denying his motion for relief from the Superior Court's June 23, 1998 dismissal of his appeal from a

Municipal Court conviction.¹ Dickens also filed a motion to dismiss his counsel and proceed pro se.

(2) Dickens' 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 twofold: (a) 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; and (b) the 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.²

(3) Dickens' counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Dickens' counsel informed Dickens of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the

¹Dickens was convicted of terroristic threatening and criminal trespass in the third degree. On the terroristic threatening charge, he was sentenced to 5 months incarceration at Level V, to be suspended after 2 months for 18 months probation at Level II. On the criminal trespass charge, he was sentenced to 18 months probation at Level II, to be served concurrently with the previous sentence.

²*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).

complete trial transcript. Dickens was also informed of his right to supplement his attorney's presentation. Dickens responded with a submission that raises four issues for this Court's consideration. The State has responded to the position taken by Dickens' counsel as well as the issues raised by Dickens and has moved to affirm the Superior Court's judgment.

(4) Dickens raises four issues for this Court's consideration. He claims that the Superior Court improperly dismissed his appeal because: a) the State failed to indict him until 15 months after his appeal was filed; b) he diligently prosecuted his appeal; c) the State unfairly requested that his appeal be dismissed; and d) his due process rights were violated.

(5) Dickens' claim that the Superior Court improperly dismissed his appeal is without merit. Dickens was convicted on criminal charges in the Municipal Court and appealed the convictions to the Superior Court.³ His trial de novo in the Superior Court was scheduled for 9:00 a.m. on June 23, 1998. When Superior Court convened at that time, Dickens was not present. The Superior Court judge afforded Dickens an additional 30 minutes to appear. The judge also told Dickens' counsel that he did not have to return to court, unless he was notified that Dickens had appeared. When Dickens still had not appeared

³Super. Ct. Crim. R. 39.

by 9:30 a.m., the Superior Court granted the State's motion to dismiss, noting that Dickens had received actual notice of the trial date and time. On November 2, 1999, the Superior Court denied Dickens' motion for relief from the judgment of dismissal. The Superior Court accepted Dickens' explanation that he had been delayed because he was not familiar with public transportation from Georgetown to Wilmington, but stated that it was Dickens' responsibility to notify the Court and counsel if he anticipated a problem with arriving at the Courthouse on time. The Superior Court has discretion to dismiss an appeal under the circumstances presented in this case.⁴ Moreover, our review of the record indicates the Superior Court committed no legal error.

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

⁴See Super. Ct. Crim. R. 39(h).

Dickens' motion to dismiss his counsel and counsel's motion to withdraw are moot.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice