IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHNNY COLLINS,	§	
	§	
Defendant Below-Appellant,	§	No. 615, 2003
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. No. IN03-02-0906
Plaintiff Below-Appellee.	§	Cr. ID 0301012010
	§	

Submitted: August 24, 2004
Decided: October 7, 2004

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

O R D E R

This 7th day of October 2004, 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) In October 2003, a Superior Court jury found the appellant Johnny Collins guilty of first degree rape. The Superior Court sentenced Collins to life imprisonment. This is Collins' direct appeal.

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

provisions of Rule 26(c) and provided Collins with a copy of the motion to withdraw and the accompanying brief. Collins also was informed of his right to supplement his attorney's presentation. Collins has written a letter for the Court's consideration. The State has responded to the position taken by Collins' counsel as well as the points raised by Collins 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.[1]

(4) The record reflects the victim testified at trial that Collins, who was living with the victim's mother at the time of the crime, forced her to engage in sexual intercourse. She was 14 at the time. She alleged that Collins threatened to harm her family if she told anyone. She testified that she told no one about the rape until several months later when she became ill one day at school and discovered she was pregnant. DNA testing

[1] *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of*

established a 99.9 percent probability that Collins was the father. Collins testified in his own defense and admitted having sexual intercourse with the victim.

(5) The only issue Collins raises in this appeal challenges the ineffectiveness of his trial counsel. This Court, however, will not consider such claims for the first time on appeal.[2]

(6) We have reviewed the record carefully and have concluded that Collins' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Collins' counsel has made a conscientious effort to examine the record and has properly determined that Collins 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/ Myron T. Steele
Chief Justice

Wisconsin, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

[2] *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).