

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEITH HANDY,	§	
	§	No. 533, 2012
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 1112006699
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: March 14, 2013

Decided: April 29, 2013

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

ORDER

This 29th day of April 2013, 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, it appears to the Court that:

(1) On April 16, 2012, the appellant, Keith Handy, pled guilty to one Count of Unlawful Sexual Contact in the First Degree and one Count of Unlawful Sexual Conduct against a Child by a Sex Offender. Handy also conceded that he was eligible to be sentenced as a habitual offender under Title 11, Section 4214(a) of the Delaware Code.¹

¹ See DEL. CODE ANN. tit. 11, § 4214(a) (Supp. 2013) (providing for a sentence of up to life imprisonment for qualifying offenders).

(2) On September 7, 2012, Handy appeared for sentencing following a pre-sentence investigation. For Unlawful Sexual Contact in the First Degree, the Superior Court granted the State's motion to declare Handy a habitual offender and sentenced Handy under Section 4214(a) to twenty-five years at Level V. For Unlawful Sexual Conduct against a Child by a Sex Offender, the Superior Court sentenced Handy to twenty-five years at Level V, suspended after ten years for decreasing levels of supervision. This is Handy's direct appeal.

(3) Handy's appellate counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c).² Handy's counsel asserts that, based upon a complete and careful examination of the record, there is no arguably appealable issue. Handy's counsel also reports that Handy did not submit any points for the Court's consideration.³ The State moves to affirm the Superior Court judgment.

(4) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that the appellant's counsel has made a conscientious examination of the record and the law for

² See DEL. SUPR. CT. R. 26(c) (governing criminal appeals without merit).

³ The record reflects that appellate counsel provided Handy, as required, with a copy of the motion, brief, and appendix, and a letter explaining that Handy had a right to submit written points for the Court's consideration. *See id.*

any arguable claims.⁴ The Court must also conduct its own review of the record and determine whether the appeal is so totally devoid of any arguably appealable issue that it can be decided without an adversary presentation.⁵

(5) In this case, the Court has reviewed the record carefully and has concluded that Handy's appeal is wholly without merit and is devoid of any arguably appealable issue. We are satisfied that Handy's appellate counsel has made a conscientious effort to examine the record and the law and properly determined that Handy could not raise a meritorious claim on 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/ Jack B. Jacobs
Justice

⁴ *Penson v. Ohio*, 488 U.S. 75, 82-83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

⁵ *See supra* note 4.