

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL J. GRIFFITH,	§
	§
Defendant Below-	§ No. 157, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. No. S00-12-0531
Plaintiff Below-	§
Appellee.	§

Submitted: October 16, 2002  
Decided: November 25, 2002

Before **WALSH, HOLLAND** and **BERGER**, Justices

**ORDER**

This 25th day of November 2002, 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, Daniel J. Griffith, was found guilty by a Superior Court jury of Conspiracy in the Second Degree.<sup>1</sup> He was

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<sup>1</sup>The jury found Griffith not guilty of Possession of a Firearm During the Commission of a Felony, Robbery in the First Degree and Wearing a Disguise During the Commission of a Felony.

sentenced as an habitual offender to 10 years incarceration at Level V.<sup>2</sup> This is Griffith's direct appeal.

(2) Griffith's trial 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.<sup>3</sup>

(3) Griffith's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Griffith's counsel informed Griffith of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Griffith was also informed of his right to supplement his attorney's presentation. Griffith responded with a brief that raises six issues for this Court's consideration. The State has

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<sup>2</sup>DEL. CODE ANN. tit. 11, § 4214(a).

<sup>3</sup>*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).

responded to the position taken by Griffith's counsel as well as the issues raised by Griffith and has moved to affirm the Superior Court's judgment.

(4) Griffith lists six issues for this Court's consideration.<sup>4</sup> He claims that: a) the jury was improperly sequestered; b) the judge engaged in improper conduct; c) his Miranda rights were violated; d) he was denied due process; e) the prosecution engaged in misconduct and abuse; and f) the police were biased and prejudiced. With regard to all six issues listed by Griffith, he has not cited any facts in the record to support his allegations and has made no legal arguments and cited no legal authorities.

(5) The evidence presented at trial established that, around 9:00 p.m. on December 23, 2000, a man wearing a ski mask and carrying a sawed off shotgun robbed Bodie's Dairy Market in Millsboro, Delaware. The robber made his getaway in a Ryder rental truck that was parked nearby. A substantial portion of the trial testimony focused on the identity of the robber. The key prosecution witnesses were Michael Connor and his father, Willard Connor. Both had been charged in connection with the robbery, had entered guilty pleas and were serving prison terms at the time of the trial. Both admitted that, on the day before and on the day of the robbery, they had driven around in the Ryder truck with Griffith making plans to commit a

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<sup>4</sup>Griffith merely lists these issues without providing any supporting argument.

robbery. However, they denied that either one of them had participated directly in the robbery, stating that they had only waited for Griffith in the Ryder truck while he robbed Bodie's. The defense disputed that it was Griffith who robbed Bodie's and presented the testimony of two prison inmates who stated that, while in prison, Michael Connor had told them it was he who robbed the store. The defense presented no evidence disputing that Griffith had discussed committing a robbery with Michael and Willard Connor.

(6) We have reviewed the entire record in this case and conclude that there is no factual support for any of Griffith's claims. Moreover, the testimony of Michael and Willard Connor provided more than sufficient evidence to support Griffith's conviction for conspiracy in the second degree.<sup>5</sup>

(7) This Court has reviewed the record carefully and has concluded that Griffith's appeal is wholly without merit and devoid of any arguably appealable issue. We are also satisfied that Griffith's counsel has made a conscientious effort to examine the record and has properly determined that Griffith could not raise a meritorious claim in this appeal.

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<sup>5</sup>*Morrissey v. State*, 620 A.2d 207, 213 (Del. 1993); DEL. CODE ANN. tit. 11, § 512.

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/ Randy J. Holland  
Justice