

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BERNEBE REYES,	§
	§
Defendant Below-	§ No. 279, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. VN00-04-1122
Plaintiff Below-	§
Appellee.	§

Submitted: November 6, 2002
Decided: November 25, 2002

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

ORDER

This 25th day of November 2002, 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 May 2000, the defendant-appellant, Bernebe Reyes, pled guilty to one count of trafficking in cocaine. The Superior Court deferred sentencing and diverted Reyes to the boot camp program for a period of six months followed by two and a half years of probation.¹ In January 2002, Reyes was charged with a violation of probation (VOP). While awaiting a hearing on the VOP charge, Reyes was returned to the boot camp program

¹ DEL. CODE ANN. tit. 11, § 6712 (2001).

for a 90-day “tune-up.” While doing his “tune-up,” Reyes was charged with additional violations resulting from his alleged refusal to follow the instructions of a boot camp officer. Following a hearing at which Reyes admitted many of the alleged violations but disputed the circumstances surrounding them, the Superior Court found Reyes in violation of the terms of his boot camp probation and his boot camp “tune-up.” The Superior Court sentenced Reyes to three years incarceration followed by two years probation. This is Reyes’ appeal.

(2) Reyes' counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Reyes' counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Reyes' attorney informed him of the provisions of Rule 26(c) and provided Reyes with a copy of the motion to withdraw and the accompanying brief. Reyes also was informed of his right to supplement his attorney's presentation. Reyes has not raised any issues for this Court's consideration. The State has responded to the position taken by Reyes' counsel 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.²

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

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).