

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JONATHAN SWANSON,	§
	§
Defendant Below-	§ No. 393, 2004
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. IN03-12-2163, -2164,
	§ and -2165
Plaintiff Below-	§ Cr. ID 0312013657
Appellee.	§

Submitted: March 2, 2005
Decided: March 22, 2005

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

ORDER

This 22nd day of March 2005, 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) The defendant-appellant, Jonathan Swanson, was convicted of first degree robbery, possession of a deadly weapon during the commission of a felony, and third degree assault following a Superior Court bench trial. The Superior Court sentenced Swanson to five years at Level V imprisonment followed by four years at decreasing levels of supervision. This is Swanson's direct appeal.

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

(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.*

* *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).

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