

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TODD D. FISHER,	§
	§
Defendant Below-	§ No. 633, 2001
Appellant,	§
v.	§ Court Below--Superior Court
	§ of the State of Delaware in and
	§ for Kent County in Cr.A.Nos.
STATE OF DELAWARE,	§ IK01-01-0563 & 0564.
	§
Plaintiff Below-	§
Appellee.	§ Def. ID No. 0012005313

Submitted: April 23, 2002

Decided: May 13, 2002

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

ORDER

This 13th day of May 2002, upon consideration of the appellant's brief pursuant to Supreme Court Rule 26(c) ("Rule 26(c)"), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) After a one-day trial in June 2001, a Superior Court jury convicted the appellant, Todd D. Fisher, of Burglary in the Second Degree and Criminal Mischief. On September 11, 2001, Fisher was sentenced to six years at Level V, suspended upon successful completion of the Key

North Program,¹ for one year at the Level IV Crest Program, suspended after successful completion of the Crest Program, for one year at Level III Aftercare followed by one year at Level II probation. This is Fisher's direct appeal.

(2) On appeal, Fisher's trial counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). Fisher's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Fisher's counsel informed Fisher of the provisions of Rule 26(c) and provided Fisher with a copy of the motion to withdraw, the Rule 26(c) brief and the complete trial transcript. Counsel also informed Fisher of his right to supplement counsel's presentation. Fisher did not submit any issues to his counsel for this Court's consideration. The State has responded to the position taken by Fisher' 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) the Court must be satisfied that defense counsel

¹ On November 16, 2001, the Superior Court approved the Department of Correction's request to substitute the Greentree Drug & Alcohol Program for the Key North Program.

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.²

(4) The Court has reviewed the record carefully and has concluded that Fisher's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Fisher's counsel has made a conscientious effort to examine the record and has properly determined that Fisher 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/ Randy J. Holland
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).