

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARLA JOHNSON,	§
	§
Defendant Below-	§ No. 556, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID No. 0006009841
Plaintiff Below-	§
Appellee.	§

Submitted: April 24, 2002

Decided: May 7, 2002

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

ORDER

This 7th day of May 2002, upon consideration of the appellant's Supreme Court Rule 26(c) brief, her attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Carla Johnson, appeals her sentence for violation of probation (VOP). Johnson had been sentenced in October 2000 for a second degree robbery conviction. As part of that sentence, Johnson had been ordered to complete the Level IV Crest Program. After a VOP hearing in October 2001, the Superior Court found that Johnson had violated a condition of her probation by requesting another member of the Crest Program to provide a urine sample on Johnson's behalf. The Superior

Court sentenced Johnson to four years at Level V incarceration suspended entirely for four years at Level IV Crest. Upon successful completion of the Crest Program, the balance of the sentence is to be suspended for Level III probation. On appeal, defense counsel indicates that Johnson does not contest the VOP adjudication or being resentenced to the Crest Program but does appeal the Superior Court's condition that she be held at Level V pending space availability in the Level IV program.

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

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

* *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).