

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PETER KOSTYSHYN,	§	
	§	
Defendant Below-	§	No. 17 & 19, 2005
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	ID Nos. 0304020154;
	§	0310023496
Plaintiff Below-	§	
Appellee.	§	

Submitted: May 12, 2005

Decided: June 20, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 20th day of June 2005, 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, Peter Kostyshyn, entered a plea of no contest to the lesser-included charges of Assault in the Third Degree and Perjury in the Third Degree. On each of his convictions, Kostyshyn was sentenced to 1 year of incarceration at Level V, to be suspended for 1 year at Level II probation. This is Kostyshyn's direct appeal.

(2) Kostyshyn's 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.¹

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

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

¹ *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).

effort to examine the record and the law and has properly determined that Kostyshyn 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/ Myron T. Steele
Chief Justice