

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARLOS D. JACKSON,	§	
	§	No. 335, 2002
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in Cr.
	§	ID No. 0107004921.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 1, 2002
Decided: December 2, 2002

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

ORDER

This 2nd day of December 2002, upon consideration of the appellant's brief 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) In September 2001, Carlos D. Jackson was indicted by a Sussex County grand jury on fourteen charges, including Rape in the Second Degree, two counts of Possession of a Firearm During the Commission of a Felony, and Kidnapping in the First Degree. The charges arose from an incident in which Jackson gave another man, Michael Burross, \$2,000 to buy three pounds of marijuana from a friend of Jackson's. Burross returned to Jackson's residence later that night without the money or the marijuana

and told Jackson that he had been swindled. Burross testified that Jackson invited him in to “figure [it] out” while Jackson called the other people who had contributed money to the \$2,000 marijuana fund. According to Burross, once he was inside Jackson’s residence, Jackson bound him with duct tape and held him captive through the night.

(2) During the course of the night, Jackson, and others who had arrived at Jackson’s house after Jackson’s telephone calls, terrorized Burross. At one point, Burross testified, Jackson sexually assaulted him with a broomstick.

(3) Following a jury trial, Jackson was convicted of Rape in the Second Degree, two counts of Possession of a Firearm During the Commission of a Felony, Unlawful Imprisonment in the First Degree (a lesser-included offense of Kidnapping in the First Degree), Assault in the Second Degree, and other crimes. After a presentence investigation, Jackson was sentenced to fifty-four years at Level V, suspended after serving twenty-eight years, for six months at Level IV Work Release, followed by twenty-five years and six months of probation. This is Jackson’s direct appeal.

(4) Jackson’s counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c). Jackson’s counsel asserts that, based upon a complete and careful examination of the record, there are no arguably

appealable issues. Jackson's attorney informed him of the provisions of Rule 26(c) and provided Jackson with a copy of the motion to withdraw and the accompanying brief and appendix. Jackson also was informed of his right to supplement his attorney's presentation.

(5) In a writing submitted through his counsel, Jackson has raised several claims of ineffective assistance of counsel. Jackson complains that his counsel failed to communicate with him about the case, to conduct an adequate investigation, and to contact witnesses. The State has responded to the position taken by Jackson's counsel, as well as to Jackson's claims, and has moved to affirm the Superior Court's decision.

(6) 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. First, this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims.¹ Second, 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

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).

² *Id.*

(7) This Court will not consider claims of ineffective assistance of counsel that are raised for the first time on appeal.³ In this case, Jackson did not raise his ineffective assistance of counsel claims in the Superior Court. Accordingly, we will not consider the claims in this appeal. Jackson, however, may raise his ineffective assistance of counsel claims in a motion for postconviction relief that is filed in the Superior Court.⁴

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

³ *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

⁴ Super. Cr. Crim. R. 61.