

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELIJAH McDANIEL,	§
	§
Defendant Below-	§ No. 387, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN00-01-1688
Plaintiff Below-	§ IN00-01-1689
Appellee.	§ IN00-01-1690

Submitted: April 4, 2002

Decided: April 22, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 22nd day of April 2002, 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, Elijah McDaniel, was convicted by a Superior Court jury of Robbery in the First Degree, Burglary in the Second Degree and Conspiracy in the Second Degree. He was sentenced to a total of 5 years incarceration at Level V, to be suspended after 3 years for decreasing levels of probation. This is McDaniel's direct appeal.

(2) McDaniel's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). McDaniel's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, McDaniel's attorney informed him of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief. McDaniel was also informed of his right to supplement his attorney's presentation. McDaniel has not raised any issues for this Court's consideration. The State has responded to the position taken by McDaniel'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.¹

¹*Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*,
(continued...)

(4) This Court has reviewed the record carefully and has concluded that McDaniel's appeal is wholly without merit and devoid of any arguably appealable issue. We are also satisfied that McDaniel's counsel has made a conscientious effort to examine the record and the law and has properly determined that McDaniel 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/Joseph T. Walsh
Justice

¹(...continued)
486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).