

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARNELL ANDERSON,	§
	§
Defendant Below-	§ No. 116, 2003
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. IN02-05-0332, -0336,
	§ and IN02-05-1728
Plaintiff Below-	§ Cr. ID 0204017900
Appellee.	§

Submitted: September 16, 2003
Decided: October 21, 2003

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

ORDER

This 21st day of October 2003, 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, Darnell Anderson, was convicted by a Superior Court jury of Trafficking in Cocaine, Conspiracy, and Possession within 1000 feet of a School. The Superior Court sentenced Anderson to a total period of seven years at Level V imprisonment to be suspended after three years minimum mandatory imprisonment for four years at decreasing levels of supervision. At trial, the State presented the testimony of several police officers who were involved in Anderson's arrest. The testimony

established that Anderson was standing on a street corner talking to a woman who was straddling a bicycle. Upon seeing the police officers' van, Anderson threw a package to the woman who attempted to ride away. Both Anderson and the woman were arrested. The package later was tested and was found to contain cocaine and crack cocaine. Anderson did not testify at trial. His defense was that the State had failed to prove the charges beyond a reasonable doubt. This is Anderson's direct appeal.

(2) Anderson's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Anderson's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Anderson's attorney informed him of the provisions of Rule 26(c) and provided Anderson with a copy of the motion to withdraw and the accompanying brief. Anderson also was informed of his right to supplement his attorney's presentation. Anderson has not raised any issues for this Court's consideration. The State has responded to the position taken by Anderson'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 Anderson's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Anderson's counsel has made a conscientious effort to examine the record and the law and has properly determined that Anderson 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).