

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KINJUM ALLEN,	§
	§
Defendant Below-	§ No. 388, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. N99-03-0863-I and
Plaintiff Below-	§ VN97-11-0266-03
Appellee.	§

Submitted: October 30, 2002  
Decided: November 18, 2002

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

**ORDER**

This 18<sup>th</sup> day of November 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) In May 1999, the defendant-appellant, Kinjum Allen, pled guilty to one count of possession with intent to deliver heroin. The Superior Court sentenced Allen to five years incarceration suspended for the boot camp diversion program.<sup>1</sup> In June 2002, the Superior Court found Allen in violation of the terms of his boot camp probation based on Allen's own admissions that he, among other things, had used illegal drugs and had fled

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<sup>1</sup> DEL. CODE ANN. tit. 11, § 6712 (2001).

the jurisdiction and committed new crimes. On the violation, the Superior Court sentenced Allen to five years incarceration followed by two years probation. This is Allen's appeal.

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

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

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<sup>2</sup> *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).