

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KALVIN L. JONES,	§
	§
Defendant Below-	§ No. 132, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0504012765
Plaintiff Below-	§
Appellee.	§

Submitted: October 27, 2006

Decided: November 16, 2006

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

ORDER

This 16th day of November 2006, 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) A Superior Court jury found the defendant-appellant, Calvin Jones (Jones), guilty of one count of attempted first degree murder and one count of possession of a firearm during the commission of a felony. The Superior Court sentenced Jones to a total minimum mandatory term of eighteen years at Level V incarceration to be followed by decreasing levels of supervision. This is Jones' direct appeal.

(2) Jones' counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Jones' counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Jones' attorney informed him of the provisions of Rule 26(c) and provided Jones with a copy of the motion to withdraw and the accompanying brief. Jones also was informed of his right to supplement his attorney's presentation. Jones sent a letter to counsel raising two discernible issues. The State has responded to the position taken by Jones and by Jones' counsel and has moved to affirm the Superior Court's judgment.

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

(4) Jones first argues about alleged inconsistencies in the testimony of State witnesses. It is well-established, however, that matters of witness credibility are for the jury to resolve.² In this case, the record reflects that the State presented sufficient evidence from which “any rational trier of fact” could have found Jones guilty beyond a reasonable doubt.³ Accordingly, we reject Jones’ first claim.

(5) Jones’ second arguable issue is that the State violated Rule 16 when it failed to reveal that it had recovered a bullet and casing from the crime scene. As defense counsel points out, however, Jones’ argument is factually inaccurate because counsel received a copy of the ballistics report prior to trial and was aware of the evidence in the State’s possession. Accordingly, there was no discovery violation.

(6) This Court has reviewed the record carefully and has concluded that Jones’ appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Jones’ counsel has made a conscientious effort to examine the record and the law and has properly determined that Jones could not raise a meritorious claim in this appeal.

² *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

³ *Dixon v. State*, 567 A.2d 854, 857 (Del. 1989).

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