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IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE SUPREME COURT
FILED

ERIKA R. GROSS,

§

Defendant Below-
Appellant,

§

v.

§

STATE OF DELAWARE,

§

Plaintiff Below-
Appellee.

§

§

§

§

§

§

§

7001 MAY P 3: 32
No. 575, 2006

DEPUTY CLERK
WILMINGTON

§ Court Below—Superior Court

§ of the State of Delaware

§ in and for Sussex County

§ Cr. ID Nos. 0511022159

0509005225

Submitted: April 18, 2007

Decided: May 1, 2007

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 1st day of May 2007, upon consideration of the appellant's brief pursuant to Supreme Court Rule 26(c), her attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Erika R. Gross, pleaded guilty to Delivery of Marijuana, Conspiracy in the Second Degree, and Maintaining a Dwelling for the Sale or Use of a Controlled Substance. She was sentenced to a total of eight years of Level V incarceration, to be suspended for nine months at Level IV Home Confinement, followed by eighteen months at Level III probation. This is Gross' direct appeal.

(2) 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

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

(4) This Court has reviewed the record carefully and has concluded that Gross' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Gross' counsel has made a

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).

conscientious effort to examine the record and the law and has properly determined that Gross 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:


Justice