

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL KLING,	§
	§
Defendant Below-	§ No. 231, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0609016946
Plaintiff Below-	§
Appellee.	§

Submitted: November 19, 2007

Decided: November 27, 2007

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

ORDER

This 27th day of November 2007, 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 convicted the defendant-appellant, Michael Kling (Kling), of two counts of third degree assault, disorderly conduct and criminal mischief. The Superior Court sentenced Kling to one year of incarceration followed by residential drug treatment and probation. This is Kling's direct appeal.

(2) Kling's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Kling's counsel asserts that, based upon a

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

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

* *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 Kling 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/ Henry duPont Ridgely
Justice