

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD DUROSS,

Defendant Below,  
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,  
Appellee.

§

§ No. 117, 2017

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§ Court Below—Superior Court  
§ of the State of Delaware

§

§ Cr. ID No. 1511008759 (N)

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Submitted: July 21, 2017

Decided: August 1, 2017

Before **VAUGHN**, **SEITZ**, and **TRAYNOR**, Justices.

**ORDER**

This 1<sup>st</sup> day of August 2017, upon consideration of the appellant's Supreme Court Rule 26(c) brief, the State's response, and the record below, it appears to the Court that:

(1) On November 7, 2016, the appellant, Donald Duross, pled guilty to Driving Under the Influence of Alcohol and Vehicular Assault in the Second Degree. Duross was sentenced as follows: (i) for Driving Under the Influence of Alcohol, eight years of Level V incarceration, suspended after four years for eighteen months of Level III probation; and (ii) for Vehicular Assault in the Second Degree, one year of Level V incarceration, suspended for one year of Level III probation. This is Duross' direct appeal.

(2) On appeal, Duross' counsel ("Counsel") filed a brief and a motion to withdraw under Supreme Court Rule 26(c). Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Counsel informed Duross of the provisions of Rule 26(c) and provided Duross with a copy of the motion to withdraw and the accompanying brief.

(3) Counsel also informed Duross of his right to identify any points he wished this Court to consider on appeal. Duross has not raised any issues for this Court's consideration. The State has responded to the Rule 26(c) brief and has moved to affirm the Superior Court's judgment.

(4) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), this Court must: (i) be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (ii) 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>1</sup>

(5) This Court has reviewed the record carefully and has concluded that Duross appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Counsel has made a conscientious effort to examine the

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<sup>1</sup> *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *Leacock v. State*, 690 A.2d 926, 927-28 (Del. 1996).

record and the law and has properly determined that Duross could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Collins J. Seitz, Jr.  
Justice