IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN PRITCHETT,	§	
	§	
Defendant Below-Appellant,	§	No. 196, 2012
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. ID 1106020443
Plaintiff Below-Appellee.	§	
	§	

Submitted: August 30, 2012
Decided: October 10, 2012

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

O R D E R

This 10th day of October 2012, 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 March 2012, a Superior Court jury convicted the defendant-appellant, John Pritchett, of two counts of Unlawfully Obtaining a Controlled Substance and two counts of Forgery in the Second Degree.[1] The Superior Court immediately sentenced Pritchett to a total period of eight years at Level V incarceration to be suspended after serving 120 days in

[1] DEL. CODE ANN. tit. 16, § 4756(a)(3) (2003); DEL. CODE ANN. tit. 11, § 861(b)(2)(e) (2007). The State dismissed two charges of Theft of a Prescription Pad prior to trial.

prison to be followed by two years of Level III probation. This is Pritchett's direct appeal.

(2) Pritchett's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Pritchett's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Pritchett's attorney informed him of the provisions of Rule 26(c) and provided Pritchett with a copy of the motion to withdraw and the accompanying brief. Pritchett also was informed of his right to supplement his attorney's presentation. Pritchett raises three issues for this Court's consideration. The State has responded to Pritchett's issues, as well as to the position taken by Pritchett'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.[2]

(4) The evidence presented at trial established that Pritchett filled two prescriptions for Oxycodone at the Family Pharmacy. The prescriptions were written on the prescription pad of Dr. Jeffrey Ciccone. Pritchett was not Dr. Ciccone's patient, and Dr. Ciccone did not write the prescriptions. The arresting officer testified that Pritchett stated that he had received the prescriptions from someone named Rena at the emergency room of Wilmington Hospital and that Pritchett stated that he did not know the prescriptions were fraudulent. Pritchett did not testify at trial. The jury found him guilty of all charges.

(5) On appeal, Pritchett raised three issues in response to his counsel's motion to withdraw. First, he contends that he was never read his rights under *Miranda v. Arizona*.[3] Second, he contends that the two charges of Theft of a Prescription Pad, which the State dismissed before trial, were used to convict him of the four remaining charges. Finally, he contends that his trial counsel was ineffective. This Court, however, will not consider a

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[2] *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).
[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

claim of ineffective assistance of counsel for the first time on direct appeal.[4] Accordingly, we do not consider that claim here.

(6) Pritchett's other two claims are unsupported by the record. The arresting officer testified under oath that Pritchett had been read his *Miranda* rights. Defense counsel cross-examined the officer on this point. In the absence of any evidence to the contrary, we reject Pritchett's claim on appeal. Moreover, the State did not present any evidence that Pritchett had stolen the doctor's pad used to fill the fraudulent prescriptions. The only evidence presented on the origin of the prescriptions came from the testimony of the arresting officer who testified that Pritchett had told him that the prescriptions were given to him in the emergency room. Accordingly, there is no factual basis in the record to support Pritchett's contention that the State used the two dismissed charges to convict him of the remaining charges.

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

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[4] *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

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