IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERMANE WATSON,	§	
	§	No. 221, 2013
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID Nos. 1207000397A
	§	1207000397B
Plaintiff Below-Appellee.	§	
	§	

Submitted: September 17, 2013
Decided: October 21, 2013

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

O R D E R

This 21st day of October 2013, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Jermane Watson, was found guilty by a Superior Court jury of Robbery in the First Degree, Assault in the Second Degree, two related counts of Possession of a Firearm During the Commission of a Felony and Possession of a Firearm By a Person Prohibited.[1] On the robbery conviction, he was sentenced to 10 years of Level V incarceration, to be suspended after 5

[1] Watson was found not guilty of Aggravated Menacing and the associated charge of Possession of a Firearm During the Commission of a Felony.

years for 5 years at Level IV, to be suspended in turn after 6 months for 18 months of Level III probation. On the assault conviction, he was sentenced to 8 years at Level V, to be suspended for 2 years at Level IV, to be suspended in turn after 6 months for 18 months of Level III probation. On each of the firearm possession convictions, he was sentenced to 5 years at Level V. This is Watson's direct appeal.

(2) Watson's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). 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) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and b) the Court must conduct its own review of the record in order to determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.[2]

(3) Watson's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Watson's counsel informed Watson of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Watson also was informed of his right to supplement

[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).

his attorney's presentation. Watson responded with a brief that raises twelve issues for this Court's consideration. The State has responded to the position taken by Watson's counsel as well as the issues raised by Watson and has moved to affirm the Superior Court's judgment.

(4) Watson raises twelve issues for this Court's consideration that may fairly be summarized as follows: a) his trial provided ineffective assistance by "threatening" him; b) the search warrants executed at his residence were improper; c) the jury instructions were improper; and d) there was insufficient evidence presented at trial to support his convictions.

(5) The evidence presented at trial established that, on June 25, 2013, at approximately 3:00 p.m., the male victim was sitting with his female cousin on the steps of the residence at 1023 Bennett Street, Wilmington, Delaware. An African-American man with whom neither was familiar walked past them. From about five feet away, the man turned around, pulled out a revolver with his left hand, pointed it at the male victim and demanded money. The victim took his money from his left pocket and gave it to the robber. The victim then grabbed for the robber's left wrist and the two struggled over the gun. During the struggle, the gun fired, hitting the victim above his right knee. The robber ran away and the victim's cousin called 911.

(6) The victim was taken to the Christiana Hospital Emergency Room, where photographs of his injuries were taken. While in the Emergency Room, the victim told a Wilmington police detective that the robber was a thin, medium-skinned African-American male, 5 foot 7 or 8, with a short Afro and wearing tan khaki shorts. At the scene of the crime, a bullet was found on the sidewalk where the incident occurred. The victim's cousin gave a description of the robber to police and stated that she could identify the man if she saw him again. Neither the victim nor his cousin had known Watson prior to the robbery. Later, both the victim and his cousin identified Watson as the robber after being shown a photographic line-up.

(7) At trial, both the victim and his cousin testified, but reluctantly. The victim's presence at trial had to be secured by means of a material witness warrant. Prior to trial, the victim told the prosecutor that he had been intimidated. The victim's cousin appeared for trial with a face covering, which the judge subsequently ordered her to remove. She told the prosecutor that she did not want the defendant to see her face. Neither the victim nor his cousin identified Watson as the robber at trial. However, the police witnesses testified that the victim and his cousin had previously given statements describing the robber and had identified Watson as the robber in a photographic line-up. Based upon that evidence, the jury found Watson guilty of robbery, assault and two weapon charges and found him

not guilty of aggravated menacing and the associated weapon charge. The charge of weapon possession by a person prohibited was severed and, in a separate proceeding, the judge found Watson guilty of that charge.

(8) Watson's first claim is that his trial counsel provided ineffective assistance by "threatening" him. It is well-settled that this Court will not consider a claim of ineffective assistance that is raised for the first time in a direct appeal.[3] Because Watson's claim was not raised and fully adjudicated below, we will not consider it for the first time in this appeal.[4]

(9) Watson's second claim is that the search warrants executed at his residence were improper. The record reflects that the police did not execute any search warrants at his residence because his residence address could not be verified. In the absence of any factual support for Watson's second claim, we conclude that it is without merit.

(10) Watson's third claim is that the jury instructions were improper. However, he provides no factual support for his claim, merely stating that he believes the judge "made a few mistakes during jury instruction." The record reflects that neither the State nor defense counsel objected to the instructions given by the judge. The instructions themselves reflect no impropriety and no error or abuse of discretion on the part of the judge. In the absence of any error with

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

respect to the jury instructions, we conclude that Watson's third claim also is without merit.

(11) Watson's fourth, and final, claim is that there was insufficient evidence introduced by the State to support his convictions. In reviewing a claim of insufficiency of the evidence, this Court must ascertain whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty of the charges against him beyond a reasonable doubt.[5] In this case, the trial record reflects that the State introduced more than sufficient evidence to support Watson's convictions of Robbery in the First Degree,[6] Assault in the Second Degree[7] and the associated weapon offenses.[8] We, therefore, conclude that Watson's fourth claim is, likewise, without merit.

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

[5] *Johnson v. State*, 983 A.2d 904, 936 (Del. 2009).
[6] Del. Code Ann. tit. 11, § 832.
[7] Del. Code Ann. tit. 11, § 612.
[8] Del. Code Ann. tit. 11, §§ 1447A and 1448.

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