IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL PARKER,	§	
	§	No. 660, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1009021639
Appellee.	§	

Submitted: August 30, 2013 Decided: November 4, 2013

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

ORDER

This 4th day of November 2013, upon careful consideration of the appellant's brief pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response, it appears to the Court that:

(1) At the conclusion of a two-day jury trial in April 2011, the appellant, Michael Parker, was convicted of Delivery of Cocaine. The Superior Court found Parker to be a habitual offender and sentenced him to eight years of imprisonment. On direct appeal, this Court affirmed Parker's conviction and sentence.¹

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¹ Parker v. State, 2011 WL 6199940 (Del. Dec. 13, 2011).

- (2) On May 21, 2012, Parker filed a *pro se* motion for postconviction relief alleging that his trial counsel had been ineffective. According to Parker, trial counsel was ineffective when he failed to obtain a video surveillance recording, to seek suppression of an out-of-court identification, to object to an in-court identification, and to make a confrontation clause objection to the forensic chemist's report. Parker argued that, had his trial counsel done these things, the result of the trial would have been different.
- (3) Parker's motion was referred to a Superior Court Commissioner for consideration. The Commissioner requested an affidavit from Parker's trial counsel and a response from the State, and Parker filed a reply.
- (4) By report dated October 4, 2012, the Commissioner recommended that Parker's motion should be denied as without merit. Parker filed objections to the Commissioner's report. After *de novo* review, the Superior Court issued a November 20, 2012 order that adopted the report and denied Parker's motion for postconviction relief. Thereafter, this Court appointed counsel to represent Parker on appeal.
- (5) Parker's counsel (hereinafter "Appellate Counsel") has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) asserting that there are no arguably appealable issues.² Parker has raised claims for the Court's

² See Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).

consideration.³ The State has responded to Parker's claims and has requested that the judgment of the Superior Court be affirmed.

- (6) On appeal, Parker continues to allege that his trial counsel was ineffective. To prevail on his claim, Parker must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the trial would have been different.⁴
- (7) In this case, the Superior Court concluded, and we agree, that Parker's ineffective assistance of counsel claim is without merit. Parker cannot show that he was prejudiced by his trial counsel's failure to obtain the video recording when, by the time counsel was appointed to represent Parker, the video recording no longer existed. Next, because Parker cannot show that there was a legitimate basis upon which to suppress and/or object to the in-court and out-of-court identifications, he cannot demonstrate that he was prejudiced by his trial counsel's failure to suppress and/or object to them. Furthermore, Parker cannot show that he was prejudiced by his trial counsel's strategic decision to stipulate to the admission of the forensic chemist's report when Parker's defense at trial misidentification was not based on the report, and the State was prepared to call the chemist who wrote the report.

³ *Id*.

⁴ Strickland v. Washington, 466 U.S. 668, 688, 694 (1984).

(8) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that the defendant's counsel has made a conscientious examination of the record and the law for arguable claims by conducting its own review of the record to determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.⁵ In Parker's case, having conducted an independent review of the record, we are satisfied that Appellate Counsel made a conscientious effort to examine the record and the law and properly determined that Parker could

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.

not raise a meritorious claim in this appeal.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

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⁵ 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).