

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JENNIFER A. HERR,	§	
	§	No. 299, 2015
Defendant Below,	§	
Appellant,	§	Court Below:
	§	Superior Court of the
v.	§	State of Delaware
	§	
STATE OF DELAWARE,	§	Cr. ID No. 1401010595
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: November 17, 2015
Decided: January 4, 2016

Before **HOLLAND, VALIHURA, and VAUGHN**, Justices.

ORDER

This 4th day of January 2016, upon consideration of the appellant’s brief under Supreme Court Rule 26(c), her defense counsel’s motion to withdraw, and the State of Delaware’s response, it appears to the Court that:

(1) On January 7, 2015, a Superior Court jury found the appellant, Jennifer A. Herr, guilty of Felony Theft and Conspiracy in the Second Degree. On May 29, 2015, after a presentence investigation, the Superior Court sentenced Herr to two years at Level V suspended for one year at Level II probation. This is Herr’s direct appeal.

(2) On appeal, Herr’s defense counsel has filed a brief and a motion to withdraw under Supreme Court Rule 26(c).¹ Defense counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Defense counsel represents that he provided Herr with a copy of the motion to withdraw and the accompanying brief and informed Herr of her right to identify any points she wished this Court to consider on appeal. Herr did not submit any points for the Court’s consideration. The State has responded to the Rule 26(c) brief and has moved to affirm the Superior Court’s judgment.

(3) When reviewing a motion to withdraw and an accompanying brief under Supreme Court Rule 26(c), this Court must be satisfied that the appellant’s defense counsel has made a conscientious examination of the record and the law for arguable claims.² Also, the Court must conduct its own review of the record and determine whether “the appeal is indeed so frivolous that it may be decided without an adversary presentation.”³

¹ See Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).

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 *Penson v. Ohio*, 488 U.S. at 81.

(4) In this case, having conducted “a full examination of all the proceedings” and having found “no nonfrivolous issue for appeal,”⁴ the Court concludes that Herr’s appeal “is wholly without merit.”⁵ The Court is satisfied that Herr’s defense counsel made a conscientious effort to examine the record and the law and properly determined that Herr could not raise a meritorious claim on 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/ Karen L. Valihura
Justice

⁴ *Id.* at 80.

⁵ *See supra* note 1.