

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENYON O'NEAL,	§	
	§	No. 632, 2008
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. 0704007283
Appellee.	§	

Submitted: May 11, 2009

Decided: July 1, 2009

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

ORDER

This 1st day of July 2009, 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) On October 9, 2008, the appellant, Kenyon O'Neal, pled guilty to one count of Possession with Intent to Deliver Cocaine. At sentencing on December 5, 2008, the Superior Court granted the State's motion to declare O'Neal a habitual offender and sentenced O'Neal to five years at Level V imprisonment followed by six months at Level IV.¹ This appeal followed.

¹ Del. Code Ann. tit. 11, 4214(a) (2007).

(2) On appeal, O’Neal’s counsel (“Counsel”) has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review of a motion to withdraw and an accompanying brief under Rule 26(c) is two-fold. First, the Court must be satisfied that Counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.² Second, the Court must conduct its own review of the record and determine whether the appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.³

(3) Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. Counsel states that he provided O’Neal with a copy of the motion to withdraw, the accompanying brief and appendix and the trial transcript and advised O’Neal that he had a right to supplement Counsel’s presentation. O’Neal did not submit any points for this Court’s consideration. The State has responded to the position taken by Counsel and has moved to affirm the Superior Court’s judgment.

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 *Id.*

(4) This Court has reviewed the record carefully and has concluded that O'Neal's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that O'Neal could not raise a meritorious claim in this 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/ Jack B. Jacobs
Justice