

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NICHOLAS PORTER,	§	
	§	No. 252, 2017
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware
v.	§	
	§	Cr. ID No. 1603023690 (N)
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 1, 2017

Decided: February 9, 2018

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

ORDER

This 9th day of February 2018, having considered the no-merit brief and motion to withdraw filed by the appellant’s counsel under Supreme Court Rule 26(c), the State’s response, and the Superior Court record, it appears to the Court that:

(1) Following a jury trial in May 2017, the appellant, Nicholas Porter, was found guilty of Theft of a Motor Vehicle, Burglary Third Degree (two counts), Driving a Vehicle While License is Suspended or Revoked, Careless or Inattentive

Driving, and Leaving the Scene of an Accident Resulting in Injury.¹ At sentencing on June 6, 2017, the Superior Court declared Porter a habitual offender and sentenced him, for one of the burglary convictions, to three years of Level V incarceration. For the second burglary conviction and the other convictions, the Superior Court sentenced Porter to a total of seven years of Level V suspended after three years for two years of Level IV supervision suspended after six months for Level III probation. This is Porter's direct appeal.

(2) On appeal, Porter's trial counsel has filed a no-merit brief and a motion to withdraw under Supreme Court Rule 26(c). Porter's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Porter's counsel informed him of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief and appendix in draft form. Also, Porter's counsel informed him of his right to submit a written supplement identifying points he wanted the Court to consider on appeal. Porter has not raised any issues 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.

¹ The trial judge set aside guilty verdicts on two other charges—Theft of a Motorcycle and a related Conspiracy charge—after finding there was insufficient evidence for those charges to have gone to the jury.

(3) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that the appellant’s 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 to determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.³

(4) Having conducted “a full examination of all the proceedings” and having found “no nonfrivolous issue for appeal,”⁴ the Court concludes that Porter’s appeal “is wholly without merit.”⁵ The Court is satisfied that Porter’s counsel made a conscientious effort to examine the record and the law and properly determined that Porter could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ James T. Vaughn, Jr.
Justice

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 81–82.

⁴ *Id.* at 80.

⁵ Del. Supr. Ct. R. 26(c).