

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DILIP NYALA,	§
	§
Defendant Below-	§ No. 319, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0101002781
Plaintiff Below-	§
Appellee.	§

Submitted: December 8, 2006

Decided: February 16, 2007

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

**ORDER**

This 16<sup>th</sup> day of February 2007, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In May 2006, the Superior Court found the defendant-appellant, Dilip Nyala (Nyala), in violation of several terms of his previously-imposed probation. The Superior Court sentenced Nyala to a total period of six years incarceration. This is Nyala's appeal from his violation of probation (VOP) sentence.

(2) Nyala's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Nyala's counsel asserts that, based upon a

complete and careful examination of the record, there are no arguably appealable issues. By letter, Nyala's attorney informed him of the provisions of Rule 26(c) and provided Nyala with a copy of the motion to withdraw and the accompanying brief. Nyala also was informed of his right to supplement his attorney's presentation. The only issue Nyala has raised for the Court's consideration is a challenge to the length of his VOP sentence. The State has responded to the position taken by Nyala's counsel, as well as the issue raised by Nyala, and has moved to affirm the Superior Court's judgment.

(3) 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) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.\*

(4) This Court has reviewed the record carefully and has concluded that Nyala's appeal is wholly without merit and devoid of any arguably appealable issue. Nyala admitted to the Superior Court judge that he had

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\* *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).

violated the terms of his probation. Moreover, the six-year sentence imposed by the Superior Court was well below the seventeen-year term that the Superior Court could have imposed. Accordingly, we are satisfied that Nyala's counsel has made a conscientious effort to examine the record and the law and has properly determined that Nyala 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/Henry duPont Ridgely  
Justice