

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FELIX ROSARIO,	§
	§
Defendant Below-	§ No. 28, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID No. 0012009363
Plaintiff Below-	§
Appellee.	§

Submitted: October 17, 2002

Decided: October 25, 2002

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

ORDER

This 25th day of October 2002, 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) A Superior Court jury convicted the defendant-appellant, Felix Rosario, of trafficking in cocaine, possession with intent to deliver, and four additional charges. The Superior Court sentenced Rosario to a total period of three years incarceration followed by five years probation. This is Rosario's direct appeal.

(2) Rosario's trial counsel filed a brief and a motion to withdraw pursuant to Rule 26(c). Upon consideration of the brief and motion to

withdraw, this Court concluded that substitute counsel should be appointed to represent Rosario on appeal. The Court directed substitute counsel to address an issue regarding the court interpreter used at Rosario's trial, as well as any other issue raised by the record. Rosario's substitute counsel wrote a letter to the Court, dated June 20, 2002, stating that the court interpreter used at Rosario's trial was properly certified. Counsel therefore concluded there was no arguable issue Rosario could raise on appeal concerning the court interpreter's qualifications.

(3) Thereafter, Rosario's counsel filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c). Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Rosario's attorney informed him of the provisions of Rule 26(c) and provided Rosario with a copy of the motion to withdraw and the accompanying brief. Rosario also was informed of his right to supplement his attorney's presentation. Rosario has not raised any issues for this Court's consideration. The State has responded to the position taken by Rosario's counsel and has moved to affirm the Superior Court's judgment.

(4) 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.*

(5) This Court has reviewed the record carefully and has concluded that Rosario's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Rosario's counsel has made a conscientious effort to examine the record and the law and has properly determined that Rosario 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/Joseph T. Walsh

Justice

* *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).