

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH SPAHR,	§
	§ No. 204, 2017
Defendant Below,	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID No. 1601013816 (N)
	§
Plaintiff Below,	§
Appellee.	§

Submitted: September 21, 2017

Decided: September 29, 2017

Before **STRINE**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

**ORDER**

This 29th day of September 2017, upon consideration of the appellant's Supreme Court Rule 26(c) brief, the State's response, and the record below, it appears to the Court that:

(1) In March 2016, a New Castle County grand jury indicted the appellant, Joseph Spahr, for Assault in the Second Degree and Resisting Arrest in one case and for Assault in the Second Degree (which the State subsequently reduced to Assault in the Third Degree) in another case. The cases were tried together. After a three-day trial, a New Castle County jury found Spahr guilty of Assault in the Third Degree and not guilty of the other charges. The Superior Court sentenced Spahr to

one year of Level V incarceration, suspended for one year of Level III probation. This is Spahr's direct appeal.

(2) On appeal, Spahr's counsel ("Counsel") filed a brief and a motion to withdraw under Supreme Court Rule 26(c). Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Counsel informed Spahr of the provisions of Rule 26(c) and provided Spahr with a copy of the motion to withdraw and the accompanying brief.

(3) Counsel also informed Spahr of his right to identify any points he wished this Court to consider on appeal. Spahr has not raised any issues for this Court's consideration. The State has responded to the Rule 26(c) brief and has moved to affirm the Superior Court's judgment.

(4) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), this Court must: (i) be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (ii) 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.<sup>1</sup>

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<sup>1</sup> *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *Leacock v. State*, 690 A.2d 926, 927-28 (Del. 1996).

(5) This Court has reviewed the record carefully and has concluded that Spahr's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Counsel has made a conscientious effort to examine the record and the law and has properly determined that Spahr 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/ Leo E. Strine, Jr. \_\_\_\_\_

Chief Justice