

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM R. TRICE,	§
	§ No. 443, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 1011016705
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 13, 2012

Decided: February 7, 2012

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

**ORDER**

This 7<sup>th</sup> day of February 2012, 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) The defendant-appellant, William R. Trice, entered a Robinson plea<sup>1</sup> to Rape in the Third Degree, Strangulation and Tampering With a Witness. On the rape conviction, he was sentenced to 25 years of Level V incarceration, to be suspended after 8 years, followed by 1 year at Level IV and 10 years of Level III probation. On the strangulation conviction, he was sentenced to 5 years at Level V, to be suspended for 5 years of concurrent

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<sup>1</sup> *Robinson v. State*, 291 A.2d 279, 281 (Del. 1972).

Level III probation. On the witness tampering conviction, he was sentenced to 5 years at Level V, to be suspended for 1 year of concurrent Level III probation.<sup>2</sup> This is Trice's direct appeal.

(2) Trice's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). 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) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and b) 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.<sup>3</sup>

(3) Trice's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Trice's counsel informed him of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete transcript. Trice also was informed of his right to supplement his attorney's presentation. Trice responded with a

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<sup>2</sup> Trice's sentencing order later was corrected to give him 253 days of credit for Level V time previously served.

<sup>3</sup> *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).

brief that raises one issue for this Court's consideration. The State has responded to the position taken by Trice's counsel as well as the issue raised by Trice and has moved to affirm the Superior Court's judgment.

(4) Trice raises one issue for this Court's consideration. He claims that the public defender who represented him at his plea hearing provided ineffective assistance by failing to withdraw from representing him due to a conflict of interest. According to Trice, because the Office of the Public Defender previously represented a defendant in two Kent County criminal matters in which he was a co-defendant, the Office of the Public Defender as a whole should have moved to withdraw from representing him in this Sussex County case.

(5) It is well-settled that this Court will not consider a claim of ineffective assistance of counsel raised for the first time on direct appeal.<sup>4</sup> Because there is no evidence in the record that Trice even raised this issue below, much less that it was fully adjudicated by the Superior Court, we decline to address the issue for the first time in this proceeding.

(6) This Court has reviewed the record carefully and has concluded that Trice's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Trice's counsel has made a

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<sup>4</sup> *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986).

conscientious effort to examine the record and the law and has properly determined that Trice 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