

SUPREME COURT OF THE STATE OF DELAWARE

Kirby v. State

No. 352, 2025 · No. No. 352, 2025 · Decided March 18, 2026

SUMMARY

The Delaware Supreme Court affirmed Destiny K. Kirby’s Superior Court conviction and sentence for third-offense driving under the influence of alcohol. Applying Supreme Court Rule 26(c), the Court concluded that counsel had conscientiously reviewed the record and that the appeal was wholly without merit and presented no arguably appealable issue.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Justice Traynor; Justice Legrow; Justice Griffiths
JURISDICTION	Supreme Court of the State of Delaware
DECIDED	March 18, 2026
DOCKET	No. 352, 2025
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a Superior Court judgment of conviction and sentence; appellate counsel filed a motion to withdraw under Delaware Supreme Court Rule 26(c).
STANDARD OF REVIEW	On a Rule 26(c) motion to withdraw, the court must determine whether counsel conscientiously examined the record and law for arguable claims and independently review the record to determine whether the appeal is wholly devoid of at least arguably appealable issues.
PRECEDENTIAL VALUE	Published
PARTIES	Destiny K. Kirby v. State of Delaware

TOPICS

- appellate procedure
- standard of review
- criminal procedure

PRACTICE AREAS

- criminal appellate procedure
- criminal procedure

QUESTIONS PRESENTED

1. Whether appellate counsel satisfied the requirements of Delaware Supreme Court Rule 26(c) by conscientiously examining the record and law before moving to withdraw.
2. Whether the record contained any arguably appealable issue requiring adversary presentation or other appellate relief.

HOLDINGS

1. Counsel satisfied Rule 26(c) because counsel made a conscientious effort to examine the record and the law and properly determined that Kirby could not raise a meritorious claim on appeal.
2. Kirby's appeal was wholly without merit and devoid of any arguably appealable issue, so the Superior Court's judgment was affirmed.

KEY QUOTATIONS

“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.” (at 2)

“This Court has reviewed the record carefully and has concluded that Kirby’s appeal is wholly without merit and devoid of any arguably appealable issue.” (at 2)

FACTUAL BACKGROUND

In July 2025, a Superior Court jury found Destiny K. Kirby guilty of driving under the influence of alcohol, third offense. The Superior Court imposed a two-year Level V sentence, suspended after nine months for one year of Level III probation under TASC supervision. On appeal, counsel concluded after reviewing the record that no arguably appealable issues existed, and Kirby did not submit additional points for consideration.

PROCEDURAL HISTORY

A Superior Court jury found Kirby guilty of driving under the influence of alcohol, third offense, in July 2025. The Superior Court sentenced her to two years of Level V incarceration, suspended after nine months for one year of Level III probation under TASC supervision. On direct appeal, counsel filed a Rule 26(c) brief and motion to withdraw, Kirby identified no additional issues, and the State moved to affirm.

DISPOSITION

affirmed

CASES CITED

- Penson v. Ohio, 488 U.S. 75, 83 (1988)
- Leacock v. State, 690 A.2d 926, 927-28 (Del. 1996)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE DESTINY K. KIRBY, § § No. 352, 2025 Defendant Below, § Appellant, § Court Below—Superior Court § of the State of Delaware v. § § Cr. ID Nos. 2410012126 (N) STATE OF DELAWARE, § § Appellee. § Submitted: January 30, 2026 Decided: March 18, 2026 Before TRAYNOR, LEGROW and GRIFFITHS, Justices. ORDER After consideration of the brief and motion to withdraw filed by the appellant’s counsel under Supreme Court Rule 26(c), the State’s response, and the record on appeal, it appears to the Court that: (1) In July 2025, a Superior Court jury found the appellant, Destiny K. Kirby, guilty of driving under the influence of alcohol (3rd offense).

The Superior Court sentenced Kirby to two years of level V incarceration, suspended after nine months for one year of Level III probation under TASC supervision. This is Kirby’s direct appeal. (2) On appeal, Kirby’s counsel (“Counsel”) filed a brief and a motion to withdraw under Rule 26(c). Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues.

Counsel informed Kirby of the provisions of Rule 26(c) and provided her with a copy of the motion to withdraw and the accompanying brief. (3) Counsel also informed Kirby of her right to identify any points she wished this Court to consider on appeal. Kirby has not provided points 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.¹ (5) This Court has reviewed the record carefully and has concluded that Kirby’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 Kirby could not raise a meritorious claim on appeal. 1 *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *Leacock v. State*, 690 A.2d 926, 927-28 (Del. 1996). 2 NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

The motion to withdraw is moot. BY THE COURT: /s/ Abigail M. LeGrow Justice 3