

SUPREME COURT OF THE STATE OF DELAWARE

Kirby v. State

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

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