

Affirmed as Modified; Opinion Filed July 20, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-15-00409-CR

**ERIC JAMES BALLOU, Appellant
v.
THE STATE OF TEXAS, Appellee**

**On Appeal from the County Court at Law
Rockwall County, Texas
Trial Court Cause No. CR15-0124**

MEMORANDUM OPINION

Before Justices Francis, Lang-Miers, and Myers
Opinion by Justice Lang-Miers

Appellant Eric James Ballou pleaded not guilty to the court on a charge of driving while intoxicated, second offense. The court found him guilty as charged and assessed punishment at 360 days in the Rockwall County jail and a \$2,000 fine. On appeal, appellant's attorney filed a brief in which she concluded that the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967). The brief presents a professional evaluation of the record showing why, in effect, there are no arguable grounds to advance. *See High v. State*, 573 S.W.2d 807, 811–12 (Tex. Crim. App. [Panel Op.] 1978). Counsel delivered a copy of the brief to appellant. We advised appellant of his right to file a pro se response, but he did not file a pro se response. *See Kelly v. State*, 436 S.W.3d 313, 319–21 (Tex. Crim. App. 2014) (identifying duties of appellate courts and counsel in *Anders* cases).

We have reviewed the record and counsel’s brief. *See Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005) (explaining appellate court’s duty in *Anders* cases). We agree that the appeal is frivolous and without merit. We find nothing in the record that might arguably support the appeal.

Although not an arguable issue, we note clerical errors in the Amended Nunc Pro Tunc Judgment & Sentence. The judgment refers to appellant’s name in three places: the style of the case, the first paragraph, and the second paragraph; appellant’s name is misspelled in the second paragraph. Accordingly, we modify the second paragraph of the trial court’s Amended Nunc Pro Tunc Judgment & Sentence to change “BALLOW” to “BALLOU.” *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref’d). Additionally, the Amended Nunc Pro Tunc Judgment & Sentence does not contain the date of offense and degree of offense for which appellant was convicted. *See* TEX. CODE CRIM. PROC. ANN. art. 42.01, § 1(14) (West Supp. 2015). The trial court orally pronounced appellant guilty of driving while intoxicated, second offense, finding that the State had proved the underlying conviction for driving while intoxicated. The offense for which appellant was found guilty was punishable as a Class A misdemeanor. *See* TEX. PENAL CODE ANN. § 49.09(a) (West Supp. 2015). And it was undisputed that the offense occurred on November 2, 2014. Accordingly, we modify line eight of the first paragraph of the Amended Nunc Pro Tunc Judgment & Sentence to include the following information shown in bold:

“Defendant guilty as charged in the information of Driving While Intoxicated 2nd **on November 2, 2014, a Class A misdemeanor. . . .**” *See* TEX. CODE CRIM. PROC. ANN. art. 42.01, § 1(14); *see also* TEX. R. APP. P. 43.2(b); *Bigley*, 865 S.W.2d at 27–28; *Asberry*, 813 S.W.2d at

529–30; *Rapovich v. State*, No. 03-96-00059-CR, 1996 WL 530014, at *1–2 (Tex. App.—Austin Sept. 18, 1996, no pet.) (per curiam) (not designated for publication).

As modified, we affirm the trial court’s judgment.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ERIC JAMES BALLOU, Appellant

No. 05-15-00409-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law,
Rockwall County, Texas

Trial Court Cause No. CR15-0124.

Opinion delivered by Justice Lang-Miers.

Justices Francis and Myers participating.

Based on the Court's opinion of this date, the Amended Nunc Pro Tunc Judgment of the trial court is **MODIFIED** as follows:

"BALLOW" in the second paragraph is changed to "BALLOU."

Line eight of the first paragraph is amended to add the following language in bold:

"Defendant guilty as charged in the information of Driving While Intoxicated 2nd **on November 2, 2014, a Class A misdemeanor . . .**"

As modified, the Amended Nunc Pro Tunc Judgment is **AFFIRMED**.

Judgment entered this 20th day of July, 2016.