COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00329-CR

STACY RENEE MCINTYRE — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 355TH DISTRICT COURT OF HOOD COUNTY
TRIAL COURT NO. CR12962

MEMORANDUM OPINION[1]

Appellant Stacy Renee McIntyre appeals from her conviction and punishment for driving while intoxicated with a child passenger. We affirm the trial court's judgment. *See* Tex. R. App. P. 43.2(a).

[1]*See* Tex. R. App. P. 47.4.

McIntyre was seen driving erratically before entering a convenience store, leaving two young children in the car.[2] A customer in the store saw McIntyre pull into the parking lot incorrectly, "stumble[]" out of the car, and unsteadily walk to the back of the store. Her speech was slurred and she "didn't seem to be very coherent." The customer called police, who arrived and administered field-sobriety tests to McIntyre, which she could not successfully perform. The totality of the circumstances led the officers to believe that McIntyre was intoxicated, and they arrested her for driving while intoxicated. McIntyre refused to provide a blood sample, and a warrant was procured for such a sample. McIntyre's sample tested positive for methamphetamine, muscle relaxers, and hydrocodone.

McIntyre was indicted for driving while intoxicated with two children under the age of fifteen as passengers. *See* Tex. Penal Code Ann. § 49.045 (West 2011). McIntyre pleaded not guilty to the offense alleged in the indictment and elected to have a jury assess her punishment if convicted. *See* Tex. Code Crim. Proc. Ann. art. 37.07, § 2(b) (West Supp. 2016). McIntyre also filed an application for community supervision. *See id.* art. 42.12, § 4(e) (West Supp. 2016). A jury found McIntyre guilty. After a punishment hearing, the jury assessed her punishment at two years' confinement in a state-jail facility, but recommended that the sentence be suspended and that she be placed on community supervision for five years. The jury also assessed a $5,000 fine,

[2]These children—McIntyre's friend's children—were three and four years old.

which it also recommended be suspended. The trial court suspended imposition of the sentence and fine, as recommended by the jury, and placed McIntyre on community supervision for five years. *See id.* art. 42.12, § 15(a)(2-a), (a)(3), (b).

McIntyre timely filed a notice of appeal from the trial court's judgment. *See* Tex. R. App. P. 26.2(a), 27.1(b). McIntyre's court-appointed appellate counsel has filed a motion to withdraw as counsel, accompanied by a brief in support of that motion. In the brief, counsel states that, in his professional opinion, this appeal is frivolous and without merit. Counsel's brief and motion meet the requirements of *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds for relief. McIntyre did not respond to counsel's brief or motion although both counsel and this court advised her of her right to do so. *See Kelly v. State*, 436 S.W.3d 313, 319 (Tex. Crim. App. 2014).

Once an appellant's court-appointed attorney files a motion to withdraw on the grounds that an appeal is frivolous and fulfills the requirements of *Anders*, we have a supervisory obligation to undertake an independent examination of the record. *See Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991); *Mays v. State*, 904 S.W.2d 920, 922–23 (Tex. App.—Fort Worth 1995, no pet.). In this evaluation, we consider the record and the arguments raised in the *Anders* brief. *See United States v. Wagner*, 158 F.3d 901, 902 (5th Cir. 1998); *In re Schulman*, 252 S.W.3d 403, 409 (Tex. Crim. App. 2008). We have done so and independently conclude that there is nothing in the record that might arguably

support the appeal and that the appeal is frivolous. *See Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005); *see also Meza v. State*, 206 S.W.3d 684, 685 n.6 (Tex. Crim. App. 2006). Accordingly, we grant counsel's motion to withdraw and affirm the trial court's judgment. *See Penson v. Ohio*, 488 U.S. 75, 82–83, 109 S. Ct. 346, 351 (1988); *Kelly*, 436 S.W.3d at 318–19.

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b

DELIVERED: May 25, 2017