In The
Court of Appeals
Seventh District of Texas at Amarillo

Nos. 07-15-00382-CR
07-15-00383-CR

JESSE LEE ESPY AKA JESSE LEE WHITE, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 181st District Court
Potter County, Texas
Trial Court Nos. 68,699-B & 68,701-B, Honorable Frank Griffin, Presiding

March 21, 2016

MEMORANDUM OPINION

Before QUINN, CJ., and HANCOCK and PIRTLE, JJ.

Jesse Lee Espy, a/k/a Jesse Lee White, appeals from convictions for the unauthorized use of a motor vehicle and evading arrest. He pled guilty to both charges and was placed on five years deferred adjudication probation. Subsequently, the State filed a motion to adjudicate his guilt in each case, alleging that he had violated the conditions of his probation by subsequently evading arrest. After appellant pled not true to the allegation and the trial court conducted a hearing on the motion, the trial court

found the allegation true, adjudicated him guilty of both offenses, and sentenced him to ten years in prison. Appellant then timely perfected his appeal from the convictions and was assigned appointed counsel.

Appointed counsel has filed a motion to withdraw and an *Anders*[1] brief in each cause. Through those documents, he certified that, after diligently searching the record, the appeals were without merit. Accompanying the brief and motion is a copy of a letter sent by counsel to appellant informing the latter of counsel's belief that there was no reversible error and of appellant's right to file a response, *pro se.* Appellant filed a response wherein he questioned the sufficiency of the evidence to support the adjudication of his guilt, the excessiveness of his sentence, and the effectiveness of trial counsel.

In compliance with the principles enunciated in *Anders*, appellate counsel discussed potential areas for appeal, which areas were the same as those raised by appellant himself. However, counsel then explained why the issues lacked merit.

In addition, we conducted our own review of the record to assess the accuracy of counsel's conclusions and to uncover arguable error pursuant to *In re Schulman*, 252 S.W.3d 403 (Tex. Crim. App. 2008) and *Stafford v. State,* 813 S.W.2d 508 (Tex. Crim. App. 1991). No such error was uncovered. Sufficient evidence appeared of record to illustrate that appellant committed an offense against the laws of Texas by attempting to evade a police officer. *See Cortinas v. State*, No. 07-15-00249-CR, 2016 Tex. App. LEXIS 909, at *1-2 (Tex. App.—Amarillo January 26, 2016, no pet.) (mem. op., not

[1] *See Anders v. California,* 386 U.S. 738, 744-45, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

designated for publication) (stating that the "State's burden of proof in a revocation proceeding is by a preponderance of the evidence.") The sentences levied were within the range of punishment authorized by statute. *See Ex parte Reposa*, No. AP-75,965, 2009 Tex. Crim. App. Unpub. LEXIS 725, at *40 (Tex. Crim. App. October 28, 2009) mem. op., not designated for publication) (noting that "Texas courts have long held that a sentence which falls within the statutorily prescribed range of punishment is not cruel and unusual . . . ."); *Owens v. State*, No. 12-15-00106-CR, 2016 Tex. App. LEXIS 2452, at *3 (Tex. App.—Tyler March 9, 2016, no pet. h.) (mem. op., not designated for publication) (noting the same). The record also fails to substantiate the claims of ineffective assistance of counsel since the purported facts underlying them appear nowhere in it. *Menefield v. State*, 363 S.W.3d 591, 592-93 (Tex. Crim. App. 2012) (stating that an ineffective assistance claim must be firmly founded in the record and the latter must affirmatively demonstrate the meritorious nature of the claim).

However, we note that the judgments entered in both causes refer to appellant's violation of paragraph "4(A)" of the conditions to his community supervision. No such condition existed. Rather, both the motions to adjudicate and reporter's record reflect that appellant was accused of violating the first condition of his probation, that is, the condition directing that he "[c]ommit no offense against the laws of this State or any other State or of the United States." We will reform the judgments to reflect that appellant was adjudicated guilty and his community supervision was revoked because the State established by a preponderance of the evidence that Jessie Lee Espy a/k/a Jesse Lee White committed an offense against the laws of Texas.

Accordingly, the motion to withdraw is granted, and the judgment is affirmed as reformed above.[2]

Brian Quinn
Chief Justice

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[2] Appellant has the right to file a petition for discretionary review with the Court of Criminal Appeals.