



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00335-CR

RAYMOND GERENA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 222nd District Court
Deaf Smith County, Texas
Trial Court No. CR-15C-028, Honorable Roland D. Saul, Presiding

March 22, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Appellant Raymond Gerena appeals from the trial court's order revoking his community supervision, sentencing him to two years of confinement in a state jail facility, and imposing a \$1500 fine. His appointed appellate counsel has filed an *Anders*¹ brief in support of a motion to withdraw. We will grant counsel's motion and affirm the judgment of the trial court.

¹ *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

In support of his motion to withdraw, counsel certifies he has conducted a thorough examination of the record and states his opinion it reflects no potentially plausible basis to support an appeal. *Anders*, 386 U.S. at 744-45; *In re Schulman*, 252 S.W.3d 403, 406 (Tex. Crim. App. 2008). Counsel discusses why, under the controlling authorities, the appeal is frivolous. *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. 1978). Counsel has demonstrated that he has complied with the requirements of *Anders* by providing to appellant copies of the brief, motion to withdraw, and the clerk's and reporter's records, and by notifying him of his right to file a *pro se* response to the brief. See *Kelly v. State*, 436 S.W.3d 313 (Tex. Crim. App. 2014); *In re Schulman*, 252 S.W.3d at 408. By letter, we also notified appellant of his opportunity to file a response to counsel's brief. Appellant did not file a response.

When reviewing an order revoking community supervision, the sole question before the appellate court is whether the trial court abused its discretion. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006); *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). In a revocation proceeding, the State must prove by a preponderance of the evidence that the probationer violated a condition of community supervision as alleged in the motion. *Cobb v. State*, 851 S.W.2d 871, 874 (Tex. Crim. App. 1993). If the State fails to meet its burden of proof, the trial court abuses its discretion by revoking community supervision. *Cardona*, 665 S.W.2d at 494. In determining the sufficiency of the evidence to sustain a revocation, we view the evidence in the light most favorable to the trial court's ruling. *Jones v. State*, 589 S.W.2d 419, 421 (Tex. Crim. App. 1979).

Appellant was convicted of the state jail felony offense of possession of marijuana in an amount over four ounces but less than five pounds.² The trial court suspended appellant's two-year sentence and placed him on community supervision for a period of three years.

Thereafter, the State filed a motion to revoke appellant's community supervision. A month later, the State filed an amended motion alleging appellant violated his community supervision by committing three new criminal offenses, consuming intoxicating beverages, failing to notify his community supervision officer of his new arrests, failing to report by mail to his community supervision officer, failing to complete required community service hours, and failing to pay required fees.

At the August 2016 hearing on the motion, appellant pled "true" to five of the State's allegations and the State waived the remaining allegations. Appellant's community supervision officer testified to appellant's commission of criminal offenses during his time on community supervision and, due to appellant's desire, recommended that appellant's community supervision be revoked. He also agreed with appellant's counsel appellant is "an individual who could possibly turn his life around and put it back on track."

Appellant also testified. He told the court of his military service, that he received an 80 percent disability rating on his discharge and suffered stress from his experiences. He admitted to the commission of two driving while intoxicated offenses and an assault offense while on community supervision. He acknowledged he needed

² TEX. HEALTH & SAFETY CODE ANN. § 481.121(b)(3) (West 2016).

help and told the court he qualifies for vocational training and plans to pursue that training. He asked the court to revoke his community supervision and sentence him to twelve months of imprisonment.

The trial court found the allegations to which appellant pled to be true and assessed punishment as noted. Counsel concludes the trial court did not abuse its discretion in revoking appellant's community supervision, and we agree. A plea of "true" to even one allegation in the State's motion is sufficient to support a judgment revoking community supervision. *Lewis v. State*, 195 S.W.3d 205, 209 (Tex. App.—San Antonio 2006, pet. denied); *Calderon v. State*, No. 07-03-0388-CR, 2004 Tex. App. LEXIS 4444, at *8 (Tex. App.—Amarillo May 14, 2004, no pet.) (mem. op., not designated for publication) (citing *Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. 1979)). Here, appellant pled "true" to five of the State's allegations. The record does not support a contention the court acted outside the zone of reasonableness in its sentencing decision; the sentence imposed is within the range prescribed by the Penal Code for this offense. See TEX. HEALTH & SAFETY CODE ANN. § 481.121(b)(3); TEX. PENAL CODE ANN. § 12.35 (West 2015).

We have independently examined the entire record to determine whether there are any non-frivolous issues which might support the appeal. *Penson v. Ohio*, 488 U.S. 75, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); *In re Schulman*, 252 S.W.3d at 409; *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). We have found no such issues. After reviewing the record and counsel's brief, we agree with counsel that there are no plausible grounds for appeal. *Bledsoe v. State*, 178 S.W.3d 824 (Tex. Crim. App. 2005).

Accordingly, counsel's motion to withdraw is granted³ and the trial court's judgment is affirmed.

James T. Campbell
Justice

Do not publish.

³ Counsel shall, within five days after the opinion is handed down, send his client a copy of the opinion and judgment, along with notification of the defendant's right to file a *pro se* petition for discretionary review. TEX. R. APP. P. 48.4.