In The Court of Appeals Seventh District of Texas at Amarillo

No. 07-20-00129-CR

STEVEN HASKELL YOUNG, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 278th District Court
Leon County, Texas
Trial Court No. 17-0166CR, Honorable Hal R. Ridley, Presiding

March 4, 2021

MEMORANDUM OPINION

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

In April 2018, after pleading guilty to the indicted offense of sexual assault of a child,[1] Appellant Steven Haskell Young was placed under an order of deferred adjudication community supervision for ten years.[2] The State filed a motion to adjudicate guilt in October 2019, alleging eight grounds. After Appellant pleaded true to six grounds,

[1] TEX. PENAL CODE ANN. § 22.011 (West Supp. 2020).

[2] Originally appealed to the Tenth Court of Appeals, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013).

the trial court adjudicated him guilty and sentenced him to seven years' confinement in prison. This appeal followed. Appellant's court-appointed counsel has filed a motion to withdraw, accompanied by an *Anders*[3] brief. We grant counsel's motion to withdraw, modify the judgment to set aside a fine that was not pronounced at sentencing, and affirm the judgment of the trial court.

Counsel has certified that he conducted a detailed examination of the record and, in his opinion, the record demonstrates no reversible error on which to predicate an appeal. *Anders,* 386 U.S. at 744; *In re Schulman,* 252 S.W.3d 403, 406 (Tex. Crim. App. 2008). In compliance with *High v. State,* 573 S.W.2d 807, 813 (Tex. Crim. App. [Panel Op.] 1978), counsel has discussed why, under the controlling authorities, the record presents no reversible error. By letter, counsel notified Appellant of his motion to withdraw; provided him a copy of the motion and *Anders* brief; stated he previously provided him a copy of the appellate record; provided notice of his right to file a petition for discretionary review with the Texas Court of Criminal Appeals; and provided notice of his right to file a pro se response. *See Kelly v. State,* 436 S.W.3d 313, 319-20 (Tex. Crim. App. 2014) (specifying appointed counsel's obligations on the filing of a motion to withdraw supported by an *Anders* brief). By letter, this Court also advised Appellant of his right to file a pro se response to counsel's *Anders* brief. Appellant did not file a pro se response.

"When a trial court finds several violations of community-supervision conditions, we will affirm the order revoking community supervision if the proof of any single allegation

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

is sufficient." *Shah v. State,* 403 S.W.3d 29, 33 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd); *see also Marcum v. State,* 983 S.W.2d 762, 766-67 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd) (recognizing that the State need only prove one violation of a condition of probation and that the failure of a defendant to report to his community supervision officer as instructed on one occasion is sufficient ground for adjudication of guilt). A plea of true standing alone will sufficiently support a trial court's decision to revoke community supervision and proceed with adjudication of guilt. *Tapia v. State,* 462 S.W.3d 29, 31 n.2 (Tex. Crim. App. 2015) (citing *Moore v. State,* 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980)).

By his *Anders* brief, counsel discusses grounds that could possibly support an appeal, but concludes the appeal is frivolous. We have reviewed these grounds and made an independent review of the entire record to determine whether there are any arguable grounds which might support an appeal. *See Penson v. Ohio,* 488 U.S. 75, 82-83, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); *Bledsoe v. State,* 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). With one exception, noted below regarding court costs, we have found no arguable grounds and agree with counsel that the appeal is frivolous.

In his *Anders* brief, counsel also points to a correctable defect in the judgment. The judgment obligates Appellant to pay "Unpaid Court Costs: $3,642.60." The record demonstrates that this sum includes a $2,500 fine imposed at the time Appellant was placed on deferred adjudication community supervision. At the conclusion of the punishment hearing, the trial court orally pronounced Appellant's sentence of confinement, but did not impose the fine.

When deferred adjudication community supervision is revoked and guilt adjudicated, the order adjudicating guilt sets aside the deferred adjudication order, including any previously-imposed fine. *Taylor v. State,* 131 S.W.3d 497, 502 (Tex. Crim. App. 2004); *Alexander v. State,* 301 S.W.3d 361, 363 (Tex. App.—Fort Worth 2009, no pet.). "Fines are part of a sentence and therefore must be orally pronounced in open court in order to be valid." *Lewis v. State,* 423 S.W.3d 451, 459 (Tex. App.—Fort Worth 2013, pet. ref'd) (citing *Taylor,* 131 S.W.3d at 500, 502); TEX. CODE CRIM. PROC. ANN. art. 42.03 § 1(a) (West Supp. 2020). When the oral pronouncement of sentence in open court and the written judgment conflict, the oral pronouncement controls. *Thompson v. State,* 108 S.W.3d 287, 290 (Tex. Crim. App. 2003); *Taylor,* 131 S.W.3d at 502 (applying *Thompson* in a deferred adjudication case). "The rationale for this rule is that the imposition of sentence is the crucial moment when all of the parties are physically present at the sentencing hearing and able to hear and respond to the imposition of sentence. Once he leaves the courtroom, the defendant begins serving the sentence imposed." *Ex parte Madding,* 70 S.W.3d 131, 135 (Tex. Crim. App. 2002); *see Burt v. State,* 445 S.W.3d 752, 757 (Tex. Crim. App. 2014) (explaining "due process requires that the defendant be given fair notice of all of the terms of his sentence, so that he may object and offer a defense to any terms he believes are inappropriate.").

"The solution in those cases in which the oral pronouncement and the written judgment conflict is to reform the written judgment to conform to the sentence that was orally pronounced." *Thompson,* 108 S.W.3d at 290; *see* TEX. R. APP. P. 43.2(b). A judgment may be corrected by a court of appeals if the trial court could have done so nunc pro tunc. *See, e.g., Stockstill v. State,* No. 07-19-00414-CR, 2020 Tex. App. LEXIS

5185, at *3 (Tex. App.—Amarillo July 13, 2020, no pet.) (mem. op., not designated for publication).

The record in the present case provides the information necessary to reform the judgment. Accordingly, to make it consistent with the trial court's oral pronouncement, we modify the court's written judgment by setting aside the $2,500 fine. We therefore modify the judgment so that it correctly reflects: "Unpaid Court Costs: $1,142.60."

Immediately following the judgment in the clerk's record appears a withdrawal notification[4] entitled "Order to Withdraw Funds," marked as "Attachment A" and said to be incorporated into the judgment and sentence. It directs the Texas Department of Criminal Justice to withdraw "court costs, fees and/or fines and/or restitution" in the total amount of $3,700.60[5] from Appellant's inmate account according to a specified formula. Because the total amount to be withheld is not correct, we modify the order to set aside the $2,500 unpronounced fine. *See Cerbantez v. State,* No. 07-12-00434-CR, 2013 Tex. App. LEXIS 3145, at *5 (Tex. App.—Amarillo Mar. 22, 2013, no pet.) (mem. op., not designated for publication) (modifying judgment and withholding order); *Browne v. State,* No. 02-14-00363-CR, 2015 Tex. App. LEXIS 10218, at *2 (Tex. App.—Fort Worth Oct. 1, 2015, no pet.) (mem. op., not designated for publication) (same). Accordingly, with this modification, the total amount ordered for withdrawal under the "Order to Withdraw Funds" is $1200.60.

[4] *See* TEX. GOV'T CODE ANN. § 501.014(e) (West Supp. 2020).

[5] This sum, according to the clerk's bill of costs, includes the balance of unpaid court costs ($3,642.60), plus current costs consisting of a capias fee ($50) and the fee for issuing capias ($8.00).

The trial court is ordered to prepare and file a judgment nunc pro tunc reflecting the modification of judgment we have made and to prepare a corrected "Order to Withdraw Funds," likewise reflecting the modification we have made. The trial court clerk is ordered to provide a copy of the corrected judgment and corrected "Order to Withdraw Funds" to the Institutional Division of the Texas Department of Criminal Justice. *See Sharp v. State,* No. 07-19-00409-CR, 2020 Tex. App. LEXIS 7124, at *4-5 (Tex. App.—Amarillo Sep. 2, 2020, pet. ref'd) (mem. op., not designated for publication) (so ordering).

Conclusion

After carefully reviewing the appellate record and counsel's brief, we conclude there is no plausible basis for reversal of Appellant's conviction other than the modification to set aside the unpronounced fine. *Bledsoe,* 178 S.W.3d at 826-27. We grant counsel's motion to withdraw. The judgment of the trial court is affirmed as modified herein.[6] TEX. R. APP. P. 43.2(a).

Lawrence M. Doss
Justice

Do not publish.

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[6] Counsel shall, within five days after the opinion is handed down, send Appellant a copy of the opinion and judgment, along with notification of Appellant's right to file a pro se petition for discretionary review. *See* TEX. R. APP. P. 48.4. This duty is an informational one, not a representational one. It is ministerial in nature, does not involve legal advice, and exists after the court of appeals has granted counsel's motion to withdraw. *In re Schulman,* 252 S.W.3d at 411 n.33.