



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-08-00189-CR

DANNY C. JOHNSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 6th Judicial District Court
Lamar County, Texas
Trial Court No. 21793

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

Danny C. Johnson appeals from his conviction on his open plea of guilty to assault. *See* TEX. PENAL CODE ANN. § 22.01 (Vernon Supp. 2008). After finding true the enhancement paragraphs in the indictment, Johnson was sentenced by the trial court to five years' imprisonment. *See* TEX. PENAL CODE ANN. § 12.33 (Vernon 2003). Johnson was represented by different, appointed, counsel at trial and on appeal.

Johnson's attorney has filed a brief which discusses the record and reviews the proceedings. Counsel has thus provided a professional evaluation of the record demonstrating why, in effect, there are no arguable grounds to be advanced. This meets the requirements of *Anders v. California*, 386 U.S. 738 (1967); *Stafford v. State*, 813 S.W.2d 503 (Tex. Crim. App. 1991); and *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. [Panel Op.] 1978).

Counsel mailed a copy of the brief to Johnson on January 6, 2009, informing Johnson of his right to examine the entire appellate record and to file a pro se response. Counsel simultaneously filed a motion with this Court seeking to withdraw as counsel in this appeal. Johnson has not filed a pro se response, nor has he requested an extension of time in which to file such a response.

We have determined that this appeal is wholly frivolous. We have independently reviewed the clerk's record and the reporter's record, and we agree that no arguable issues support an appeal. *See Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005).

We do note, however, that the trial court's judgment in this case indicates the degree of the offense is a "2nd Degree Felony." This offense is a third-degree felony. *See* TEX. PENAL CODE ANN. § 22.01(b)(2). The punishment range was correctly enhanced to that of a second-degree felony. *See* TEX. PENAL CODE ANN. § 12.42(a)(3). This Court has the authority to reform the judgment to make the record speak the truth when the matter has been called to our attention by any source. *French v. State*, 830 S.W.2d 607 (Tex. Crim. App. 1992). In *Asberry v. State*, 813 S.W.2d 526 (Tex. App.—Dallas 1991, pet. ref'd), the court noted that the authority of the appellate court to reform incorrect judgments is not dependent on request of any party; the appellate court may act sua sponte. The Texas Rules of Appellate Procedure provide direct authority for this Court to modify the judgment of the trial court. TEX. R. APP. P. 43.2.

Therefore, we hereby reform the judgment to indicate the correct degree of the offense as a third-degree felony.

As reformed, we affirm the judgment of the trial court.¹

Bailey C. Moseley
Justice

Date Submitted: March 16, 2009

Date Decided: March 17, 2009

Do Not Publish

¹Since we agree this case presents no reversible error, we also, in accordance with *Anders*, grant counsel's request to withdraw from further representation of Johnson in this case. No substitute counsel will be appointed. Should Johnson wish to seek further review of this case by the Texas Court of Criminal Appeals, Johnson must either retain an attorney to file a petition for discretionary review or Johnson must file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days from the date of either this opinion or the last timely motion for rehearing that was overruled by this Court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with this Court, after which it will be forwarded to the Texas Court of Criminal Appeals along with the rest of the filings in this case. *See* TEX. R. APP. P. 68.3. Any petition for discretionary review should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 68.4.