



IN THE
TENTH COURT OF APPEALS

No. 10-15-00384-CR

BRIAN WRIGHT MCGUFFEY,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 19th District Court
McLennan County, Texas
Trial Court No. 2014-1612-C1**

MEMORANDUM OPINION

Upon his open plea of guilty, the trial court convicted Brian Wright McGuffey of the offense of felony driving while intoxicated, found the enhancement paragraphs to be true, and assessed his punishment at 40 years confinement. We affirm.

McGuffey's appointed counsel filed an *Anders* brief asserting that she has diligently reviewed the appellate record and that, in her opinion, the appeal is frivolous. *See Anders v. California*, 386 U.S. 738 (1967). Counsel informed McGuffey of his right to

submit a brief on his own behalf. McGuffey filed a brief asking this Court to reduce his sentence. We review a pro se brief or other response solely to determine if there are any arguable grounds for appeal. *Bledsoe v. State*, 178 S.W.3d 824, 827 (Tex. Crim. App. 2005); *see also In re Schulman*, 252 S.W.3d 403, 409 n. 23 (Tex. Crim. App. 2008). Counsel's brief evidences a professional evaluation of the record for error, and we conclude that counsel performed the duties required of appointed counsel. *See Anders v. California*, 386 U.S. at 744; *High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978); *see also In re Schulman*, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008). McGuffey's issue that his sentence should be reduced is without merit.

In reviewing an *Anders* appeal, we must, "after a full examination of all the proceedings, ... decide whether the case is wholly frivolous." *See Anders v. California*, 386 U.S. at; accord *Stafford v. State*, 813 S.W.2d 503, 509-11 (Tex. Crim. App. 1991). An appeal is "wholly frivolous" or "without merit" when it "lacks any basis in law or fact." *McCoy v. Court of Appeals*, 486 U.S. 429, 439 n. 10 (1988). After a review of the entire record in this appeal, we determine the appeal to be wholly frivolous. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). Accordingly, we affirm the trial court's judgment.

Counsel's request that she be allowed to withdraw from representation of McGuffey is granted. Additionally, counsel must send McGuffey a copy of our decision, notify McGuffey of his right to file a pro se petition for discretionary review, and send

this Court a letter certifying counsel's compliance with Texas Rule of Appellate Procedure

48.4. TEX.R.APP.P. 48.4; *see also In re Schulman*, 252 S.W.3d at 409 n.22.

AL SCOGGINS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed; motion granted

Opinion delivered and filed January 11, 2017

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[CRPM]

