



**IN THE
TENTH COURT OF APPEALS**

No. 10-16-00249-CR

No. 10-16-00250-CR

**WAYMON WEBSTER, AKA
WAYMON WEBSTER, JR.**

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 85th District Court
Brazos County, Texas
Trial Court Nos. 15-03061-CRF-85 & 15-03062-CRF-85**

MEMORANDUM OPINION

In one plea hearing and one sentencing hearing, Waymon Webster, aka Waymon Webster, Jr. pled guilty to and was convicted of two separate offenses: Theft and Tampering with Evidence. *See* TEX. PENAL CODE ANN. §§ 31.03; 37.09 (West 2011 and 2016). He was sentenced to six years in prison for each offense. The sentences were ordered to run concurrently.

Webster's appellate attorney filed a motion to withdraw and an *Anders* brief in support of the motion to withdraw in each case, asserting that the appeals present no issue of arguable merit. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Counsel advised Webster that counsel had filed the motion and brief pursuant to *Anders* and provided Webster a copy of the record, advised Webster of his right to review the record, and advised Webster of his right to submit a response on his own behalf. Webster submitted a response. The State did not reply.

Counsel asserts in the *Anders* brief that counsel has made a thorough review of the entire reporter's record and clerk's record, the sufficiency of the pleas of guilty, the sufficiency of the evidence to support the convictions, and whether the trial court erred in sentencing Webster. After the review, counsel has concluded there is no non-frivolous issue to raise in these appeals. 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*, 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).

In his response to counsel's *Anders* brief, Webster contends his guilty pleas were involuntary and that his counsel was ineffective.¹ The record does not support Webster's contentions.

¹ In a late second response, Webster asserts that he was not allowed to withdraw his guilty plea after the trial court allegedly failed to honor the plea bargain. We had already examined this potential issue, and found that, because Webster failed to appear at his sentencing hearing and the plea agreement between the

Upon the filing of an *Anders* brief, as the reviewing appellate court, it is our duty to independently examine the record to decide whether counsel is correct in determining that an appeal is frivolous. *See Anders*, 386 U.S. at 744; *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). Arguments are frivolous when they "cannot conceivably persuade the court." *McCoy v. Court of Appeals*, 486 U.S. 429, 436, 108 S. Ct. 1895, 100 L. Ed. 2d 440 (1988).

Having carefully reviewed the entire record, the *Anders* brief, and Webster's response, we have determined that the appeal is frivolous. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). We note, however, that costs were assessed in both judgments of conviction. Where allegations and evidence of more than one offense are presented in a single trial or plea proceeding, the trial court errs in assessing costs in each conviction. *Hurlburt v. State*, 506 S.W.3d 199, 203-204 (Tex. App.—Waco 2016, no pet.). Based on our precedent, abatement to the trial court for the appointment of new counsel is not required. *See Ferguson v. State*, 435 S.W.3d 291 (Tex. App.—Waco 2014, pet. disp.). Because this error does not impact the determination of guilt or punishment and, therefore, does not result in a reversal of either judgment, we may modify one of the judgments to correct the erroneous assessment of costs. *Id.* Accordingly, the Judgment

State and Webster provided that the remedy for a failure to appear would be an open plea, and because the trial court approved that plea agreement, there was no right to withdraw his plea of guilty. *See* TEX. CODE CRIM. PROC. art. 26.13(a)(2) (West 2009) (providing the defendant is permitted to withdraw his guilty plea *if the trial court rejects the plea agreement*); *State v. Moore*, 240 S.W.3d 248, 254-255 (Tex. Crim. App. 2007).

of Conviction by Court—Waiver of Jury Trial in trial court case number 15-03061-CRF-85 is modified to delete the assessed court costs. We affirm the trial court's Judgment of Conviction by Court—Waiver of Jury Trial in trial court case number 15-03061-CRF-85 as modified and affirm the trial court's Judgment of Conviction by Court—Waiver of Jury Trial in trial court case number 15-03062-CRF-85.

Should Webster wish to seek further review of these cases by the Texas Court of Criminal Appeals, he must either retain an attorney to file a petition for discretionary review or must file a pro se petition for discretionary review. No substitute counsel will be appointed. Any petition for discretionary review must be filed within thirty days from the date of this opinion or the last timely motion for rehearing or timely motion for en banc reconsideration has been overruled by this Court. *See* TEX. R. APP. P. 68.2. Any petition and all copies of the petition for discretionary review must be filed with the Clerk of the Court of Criminal Appeals. *See* TEX. R. APP. P. 68.3. (Tex. Crim. App. 1997, amended eff. Sept. 1, 2011). 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. *See also In re Schulman*, 252 S.W.3d at 409 n.22.

Counsel's motions to withdraw from representation of Webster are granted, and counsel is discharged from representing Webster. Notwithstanding counsel's discharge, counsel must send Webster a copy of our decision, notify him 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.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed as modified

Affirmed

Opinion delivered and filed September 13, 2017

Do not publish

[CR25]

