



IN THE
TENTH COURT OF APPEALS

No. 10-22-00032-CR

BOBBY JOE WALLER,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 440th District Court
Coryell County, Texas
Trial Court No. 21-26796**

MEMORANDUM OPINION

Bobby Joe Waller was convicted of failure to register as a sex offender and sentenced to six years in prison. *See* TEX. CODE CRIM. PROC. art. 62.202(b)(2).

Waller's appointed counsel filed a motion to withdraw and a brief in support of the motion asserting that he has diligently reviewed the appellate record and that, in his opinion, the appeal is frivolous pursuant to the United States Supreme Court opinion in *Anders*, but also presenting nonreversible error in the judgment pursuant to this Court's order in *Allison*. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967);

Allison v. State, 609 S.W.3d 624, 628 (Tex. App. – Waco 2020, order).

Counsel's brief evidences a professional evaluation of the record for error and compliance with the other duties of appointed counsel. We conclude that counsel has 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 *Kelly v. State*, 436 S.W.3d 313, 319-320 (Tex. Crim. App. 2014); *In re Schulman*, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008).

In reviewing the *Anders* portion of this appeal, we must, "after a full examination of all the proceedings, ... decide whether the case is wholly frivolous." *Anders*, 386 U.S. at 744; see *Penson v. Ohio*, 488 U.S. 75, 80, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); 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, 108 S. Ct. 1895, 100 L. Ed. 2d 440 (1988). After a review of the entire record in this appeal, we have determined the appeal to be wholly frivolous. See *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005); *Cummins v. State*, 646 S.W.3d 605, 620-621 (Tex. App. – Waco 2022, pet. ref'd).

As noted previously, despite finding no reversible error, counsel has presented an issue of nonreversible error, that being, a \$15.00 time payment fee. The State did not file a brief in response to this alleged error. See *Cummins*, 646 S.W.3d at 615 ("the State is expected to file a response addressing the merits of the nonreversible error presented in the *Allison* brief. See, e.g., *Price [v. State]*, [No. 10-13-00403-CR,] 2014 Tex. App. LEXIS 10403, [*2 [(Tex. App. – Waco Sep. 18, 2014, no pet.)] (parenthetical omitted)."

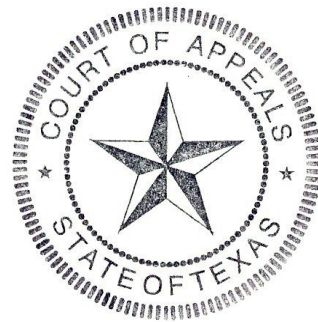
We agree that this is a nonreversible error. Any time payment fee assessed or threatened is premature. *See Dulin v. State*, 620 S.W.3d 129, 133 (Tex. Crim. App. 2021).

Accordingly, the trial court's judgment is modified to assess court cost in the amount of \$290.00. As modified, the trial court's judgment is affirmed,¹ and counsel's motion to withdraw from representation of Waller is granted.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Johnson, and
Justice Smith

Affirmed as modified; motion granted
Opinion delivered and filed December 7, 2022
Do not publish
[CR25]



¹ The bill of cost should be modified to reflect the cost due in the judgment as modified.