

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-10-00771-CR**

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**Philip Byrd, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 147TH JUDICIAL DISTRICT  
NO. D-1-DC-10-202201, THE HONORABLE WILFORD FLOWERS, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

Appellant Philip Byrd was convicted by a jury of theft, enhanced by two prior theft convictions. *See* Tex. Penal Code § 31.03(a), (e)(4)(d) (West 2011). The trial judge assessed Byrd's punishment at fifteen months' confinement in a state jail facility.<sup>1</sup>

Byrd's court-appointed attorney has filed a motion to withdraw supported by a brief concluding that the appeal is frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738, 744 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See also Penson v. Ohio*, 488 U.S. 75 (1988); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978); *Currie v. State*, 516 S.W.2d 684 (Tex. Crim. App. 1974); *Jackson v. State*, 485 S.W.2d 553 (Tex. Crim. App. 1972); *Gainous v. State*, 436 S.W.2d 137 (Tex. Crim. App. 1969).

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<sup>1</sup> Byrd did not elect prior to trial for the jury to sentence him. *See* Tex. Code Crim Proc. Ann. art. 27.02(7), art. 37.07, § 2(b) (West 2006).

Byrd received a copy of counsel's brief and was advised of his right to examine the appellate record and to file a *pro se* brief. *See Anders*, 386 U.S. at 744. No *pro se* brief or written response has been filed.

We have reviewed the record, including appellate counsel's brief, and find no reversible error. *See Garner v. State*, 300 S.W.3d 763, 766 (Tex. Crim. App. 2009); *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). We agree with counsel that the appeal is frivolous. Counsel's motion to withdraw is granted.

The judgment of conviction is affirmed.

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Melissa Goodwin, Justice

Before Justices Puryear, Rose and Goodwin

Affirmed

Filed: November 8, 2011

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