

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-18-00008-CV

In the Matter of C. F.

**FROM THE DISTRICT COURT OF MILAM COUNTY, 20TH JUDICIAL DISTRICT
NO. JV01902, HONORABLE JOHN YOUNGBLOOD, JUDGE PRESIDING**

MEMORANDUM OPINION

C.F., a juvenile, appeals from the trial court's order, after a bench trial, adjudicating him delinquent for committing assault on a peace officer, Tex. Penal Code § 22.01(b-2), and resisting arrest, *id.* § 38.03(a), and committing him to the Texas Department of Juvenile Justice.

On appeal, C.F.'s court-appointed attorney filed an *Anders* brief informing this Court that she made a diligent review of the appellate record and can find no arguable grounds to be advanced on appeal. *See Anders v. California*, 386 U.S. 738, 744 (1967). The brief meets the requirements of *Anders* by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See In re D.A.S.*, 973 S.W.2d 296, 297 (Tex. 1998) (applying *Anders* procedure in juvenile appeal). Counsel has indicated that she has provided her client with a copy of the brief and has informed him of his right to file a pro se brief; has advised her client of his right to review the appellate record; and has explained to her client the process for obtaining the appellate record. *See Taylor v. Texas Dep't of Protective & Regulatory Servs.*, 160 S.W.3d 641, 646–47 & n.4 (Tex. App.—Austin 2005, pet. denied); *see also Kelly v. State*, 436 S.W.3d 313, 319–21 (Tex. Crim. App. 2014). Appellant has not filed a pro se brief.

Upon receiving an *Anders* brief, we must conduct a full examination of all of the proceedings to determine whether the appeal is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). We have reviewed the entire record, including the *Anders* brief submitted on C.F.’s behalf, and we have found nothing that would arguably support an appeal. We agree that the appeal is frivolous and without merit.

However, our own review of the record has revealed a non-reversible error in the order of adjudication. The order states that C.F. violated sections 22.02(b-2) and 38.03(a) of the Texas Penal Code. Section 22.02, however, applies to aggravated assault, and the record before us indicates that the trial court found not true the allegation that C.F. committed aggravated assault by threatening someone with a firearm. Therefore, the order should reflect that C.F. violated Penal Code section 22.01(b-2), which applies to the assault of a peace officer, instead of section 22.02(b-2).

Accordingly, we modify the trial court’s order of adjudication to reflect that C.F. violated sections 22.01(b-2) and 38.03(a) of the Texas Penal Code. We affirm the trial court’s order of adjudication as modified. We deny counsel’s motion to withdraw.¹

¹ In *In re P.M.*, the Texas Supreme Court held that the right to counsel in suits seeking the termination of parental rights extends to “all proceedings in [the Texas Supreme Court], including the filing of a petition for review.” *In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (per curiam). Texas courts have held this continued right to counsel applies equally in juveniles appeals. *In re A.H.*, 530 S.W.3d 715, 717 (Tex. App.—Fort Worth 2017, no pet.); *In re A.C.*, Nos. 01-15-00931-CV, 01-15-00932-CV, 01-15-00933-CV, 2016 WL 1658777, at *1 (Tex. App.—Houston [1st Dist.] Apr. 26, 2016, no pet.) (mem. op.) (per curiam). Accordingly, counsel’s obligations to appellant have not yet been discharged. If appellant, after consulting with counsel, desires to file a petition for review, counsel should timely file with the Texas Supreme Court “a petition for review that satisfies the standards for an *Anders* brief.” See *In re P.M.*, 520 S.W.3d at 27–28.

Scott K. Field, Justice

Before Chief Justice Rose, Justices Goodwin and Field

Modified and, as Modified, Affirmed

Filed: June 8, 2018