

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-21-00609-CR

Ronald Rudolph Rodriguez, Appellant

v.

The State of Texas, Appellee

**FROM THE 207TH DISTRICT COURT OF COMAL COUNTY
NO. CR2015-395, THE HONORABLE R. BRUCE BOYER, JUDGE PRESIDING**

MEMORANDUM OPINION

Ronald Rudolph Rodriguez was charged with possession of a controlled substance (methamphetamine) in a correctional facility and with possession of less than one gram of a controlled substance (methamphetamine). *See* Tex. Penal Code § 38.11(d), (g); Tex. Health & Safety Code §§ 481.102(6), .115(a)-(b). The indictment also contained two enhancement paragraphs alleging that Rodriguez had previously been convicted of two felony offenses. *See* Tex. Penal Code §§ 12.42(d), .425(b). At the start of the trial, Rodriguez pleaded not guilty to the offense of possessing a controlled substance in a correctional facility but pleaded guilty to the offense of possessing methamphetamine. During the guilt-innocence phase, the jury found Rodriguez guilty of possession in a correctional facility. At the end of the punishment phase, the jury found the enhancement allegations to be true and assessed Rodriguez's punishment for the charge of possession in a correctional facility at life imprisonment and for the charge of possession of a controlled substance at twenty years' imprisonment, and the trial court rendered

its judgments of conviction consistent with the jury verdicts. *See id.* §§ 12.33, .42(d). Rodriguez appealed his convictions. This Court determined that one of the enhancement allegations should not have been used for enhancement purposes because the prior conviction was void, reversed the trial court’s judgments of conviction, and remanded for a new punishment hearing. *Rodriguez v. State*, No. 03-18-00260-CR, 2018 WL 6425018, at *12, *14 (Tex. App.—Austin Dec. 7, 2018, pet. ref’d) (mem. op., not designated for publication).

On remand, the jury charge on punishment included the remaining enhancement allegation. During the punishment hearing, evidence was presented regarding Rodriguez’s prior convictions, including the one used for enhancement purposes, and his criminal history after he was arrested in this case. The jury found the enhancement allegation to be true and sentenced Rodriguez to twenty years’ imprisonment for the count of possession in a correctional facility and to two years’ imprisonment for the count of possession. *See* Tex. Penal Code §§ 12.35(a), .42(a). Rodriguez appeals his convictions. *See Sanders v. State*, 832 S.W.2d 719, 723-24 (Tex. App.—Austin 1992, no pet.) (explaining that appeal following remand for new punishment hearing “is limited solely to the retrial of appellant’s punishment”). Rodriguez’s court-appointed attorney on appeal filed a motion to withdraw supported by an *Anders* brief contending that the appeal is frivolous and without merit. *See Anders v. California*, 386 U.S. 738, 744-45 (1967).

Rodriguez’s court-appointed attorney’s brief concluding that the appeal is frivolous and without merit meets the requirements of *Anders* by presenting a professional evaluation of the record and demonstrating that there are no arguable grounds to be advanced. *See id.*; *Garner v. State*, 300 S.W.3d 763, 766 (Tex. Crim. App. 2009); *see also Penson v. Ohio*, 488 U.S. 75, 81-82 (1988) (explaining that *Anders* briefs serve purpose of “assisting the court in determining both that counsel in fact conducted the required detailed review of the case

and that the appeal is . . . frivolous”). Rodriguez’s counsel represented to the Court that he provided copies of the motion and brief to Rodriguez; advised Rodriguez of his right to examine the appellate record, file a pro se brief, and pursue discretionary review following the resolution of the appeal in this Court; and provided Rodriguez with a form motion for pro se access to the appellate record along with the mailing address of this Court. *See Kelly v. State*, 436 S.W.3d 313, 319-20 (Tex. Crim. App. 2014). Although Rodriguez requested an extension of time to file a pro se brief, he has not filed a brief, and the time permitted to file a brief has expired.

We have independently reviewed the record and have found nothing that might arguably support the appeal. *See Anders*, 386 U.S. at 744; *Garner*, 300 S.W.3d at 766. We agree with counsel that the appeal is frivolous and without merit. We grant counsel’s motion to withdraw and affirm the trial court’s judgments of conviction.

Thomas J. Baker, Justice

Before Justices Goodwin, Baker, and Kelly

Affirmed

Filed: December 21, 2022

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