

NO. 12–08–00036–CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***MARCUS SESSION,
APPELLANT***

§

APPEAL FROM THE 241ST

V.

§

JUDICIAL DISTRICT COURT OF

***THE STATE OF TEXAS,
APPELLEE***

§

SMITH COUNTY, TEXAS

***MEMORANDUM OPINION
PER CURIAM***

Marcus Session appeals his conviction for possession of a controlled substance. Appellant’s counsel filed a brief asserting compliance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967) and *Gainous v. State*, 436 S.W.2d 137 (Tex. Crim. App. 1969). Appellant filed a pro se brief. We dismiss Appellant’s appeal.

BACKGROUND

Appellant was charged by indictment with possession of a controlled substance. The alleged offense was a second degree felony, but the grand jury also alleged that Appellant was an habitual offender, which resulted in a punishment range of between twenty–five years and life in prison. *See* TEX. PENAL CODE ANN. § 12.42(d) (Vernon Supp. 2008). Appellant pleaded guilty as charged and pleaded true to the enhancement allegations. He elected to have a jury determine the sentence, and the jury assessed punishment at imprisonment for sixty years. This appeal followed.

ANALYSIS PURSUANT TO ANDERS V. CALIFORNIA

Appellant’s counsel has filed a brief in compliance with *Anders* and *Gainous*. Counsel states that he has diligently reviewed the appellate record and that he is well acquainted with the facts of

this case. In compliance with *Anders*, *Gainous*, and *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978), counsel's brief presents a thorough chronological summary of the procedural history of the case and further states that counsel is unable to present any arguable issues for appeal.

Appellant argues in his pro se brief that he received ineffective assistance of counsel, that the State made impermissible jury argument, and that he was not afforded access to a law library to prepare his pro se brief. We have considered the briefing and have conducted our own independent review of the record. *See Anders*, 386 U.S. at 745, 87 S. Ct. at 1400; *see also Penson v. Ohio*, 488 U.S. 75, 80, 109 S. Ct. 346, 350, 102 L. Ed. 2d 300 (1988). We have found no reversible error. *See Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005).

CONCLUSION

As required, Appellant's counsel has moved for leave to withdraw. *See In re Schulman*, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008) (orig. proceeding); *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). We are in agreement with Appellant's counsel that the appeal is wholly frivolous. Accordingly, his motion for leave to withdraw is hereby granted, and we *dismiss* this appeal. *See In re Schulman*, 252 S.W.3d at 408–09 (“After the completion of these four steps, the court of appeals will either agree that the appeal is wholly frivolous, grant the attorney's motion to withdraw, and dismiss the appeal, or it will determine that there may be plausible grounds for appeal.”).

Counsel has a duty to, within five days of the date of this opinion, send a copy of the opinion and judgment to Appellant and advise him of his right to file a petition for discretionary review. *See* TEX. R. APP. P. 48.4; *In re Schulman*, 252 S.W.3d at 411 n.35. Should Appellant wish to seek further review of this case by the Texas Court of Criminal Appeals, he must either retain an attorney to file a petition for discretionary review or he must file a pro se petition for discretionary review. *See In re Schulman*, 252 S.W.3d at 408 n.22. Any petition for discretionary review must be filed within thirty days from the date of either this opinion or the last timely motion for rehearing that was overruled by this court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with this court, after which it will be forwarded to the Texas Court of Criminal Appeals along with the rest of the filings in this case. *See* TEX. R. APP. P. 68.3. 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; *In re Schulman*, 252 S.W.3d at 408 n.22.

Opinion delivered May13, 2009.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)