

NO. 12-09-00398-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

JESSICA JAYNE BARNES,
APPELLANT

§

APPEAL FROM THE 241ST

V.

§

JUDICIAL DISTRICT COURT

THE STATE OF TEXAS,
APPELLEE

§

SMITH COUNTY, TEXAS

MEMORANDUM OPINION
PER CURIAM

Jessica Jayne Barnes appeals her conviction for aggravated assault with a deadly weapon. Appellant’s counsel filed a brief in 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 the appeal.

BACKGROUND

In 2006, Appellant was charged by indictment with aggravated assault with a deadly weapon. After a trial, the jury found Appellant guilty and sentenced Appellant to three years of imprisonment, suspended for a ten year community supervision period. In 2009, the State filed an application to revoke Appellant’s community supervision on five grounds. Appellant pleaded “true” to all of those grounds except one. At the hearing on the application to revoke, the State called Appellant’s community supervision officer and offered further evidence of Appellant’s community supervision violations. At the conclusion of the hearing, the trial court found all five grounds to be “true,” revoked Appellant’s community supervision, and imposed a sentence of three years of imprisonment. This appeal followed.

ANALYSIS PURSUANT TO *ANDERS V. CALIFORNIA*

Appellant's counsel filed a brief in compliance with *Anders* and *Gainous*, stating that he has diligently reviewed the appellate record and is of the opinion that the record reflects no reversible error and that there is no error upon which an appeal can be predicated. From our review of Appellant's brief, it is apparent that her counsel is well acquainted with the facts in this case. In compliance with *Anders*, *Gainous*, and *High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978), counsel's brief presents a chronological summation of the procedural history of the case, and further states that counsel is unable to raise any arguable issues for appeal.

Appellant filed a pro se brief in which she raised six issues concerning the sufficiency of the evidence to revoke her community supervision, due process, the voluntariness of her plea of "true" to the State's application to revoke her community supervision, an alleged alteration of her plea of "true," the trial court's failure to orally make a deadly weapon finding, and ineffective assistance of counsel. We have considered counsel's brief and Appellant's pro se brief and have conducted our own independent review of the record. We 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 agree with Appellant's counsel that the appeal is wholly frivolous. Accordingly, his motion for leave to withdraw is hereby granted, and the appeal is *dismissed*. See *In re Schulman*, 252 S.W.3d at 408-09.

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, she must either retain an attorney to file a petition for discretionary review or she 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; *In re Schulman*, 252 S.W.3d at 408 n.22. 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 May 31, 2011.

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

(DO NOT PUBLISH)