

NO. 12-13-00350-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

DAVON ONEYL GRAVES,
APPELLANT

§ *APPEAL FROM THE 7TH*

V.

§ *JUDICIAL DISTRICT COURT*

THE STATE OF TEXAS,
APPELLEE

§ *SMITH COUNTY, TEXAS*

MEMORANDUM OPINION
PER CURIAM

Davon Oneyl Graves appeals his conviction for aggravated robbery. 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). We affirm.

BACKGROUND

In the early morning hours of March 23, 2013, an armed robbery occurred at a convenience store in Tyler, Texas. Law enforcement officers investigating the robbery discovered that Appellant was the sole suspect and arrested him. Appellant was indicted for the first degree felony offense of aggravated robbery.¹ Appellant made an open plea of “guilty” without an agreement as to punishment. He also pleaded “true” to the allegation that he used or exhibited a firearm during the commission of the offense. After admonishing Appellant, the trial court accepted his plea and found him guilty of the offense. After a hearing on punishment, the trial court sentenced Appellant to fifteen years of imprisonment. This appeal followed.

¹ See TEX. PENAL CODE ANN. § 29.03(a)(2) (West 2011).

ANALYSIS PURSUANT TO *ANDERS V. CALIFORNIA*

Appellant's counsel filed a brief in compliance with *Anders v. California* and *Gainous v. State*. Appellant's counsel states 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. He further relates that he is well acquainted with the facts in this case. In compliance with *Anders*, *Gainous*, and *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. [Panel Op.] 1978), Appellant's brief presents a chronological summation of the procedural history of the case and further states that Appellant's counsel is unable to raise any arguable issues for appeal.

Appellant submitted a letter in response to counsel's brief. Construing this letter as a pro se brief, Appellant raised issues in the letter that his sentence was excessive and that he received ineffective assistance of counsel because counsel failed to question Appellant's competency to enter a plea of guilt or stand trial. We have reviewed the record for reversible error and have found none. See *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005).

CONCLUSION

As required by *Stafford v. State*, 813 S.W.2d 503 (Tex. Crim. App. 1991), Appellant's counsel has moved for leave to withdraw. See also *In re Schulman*, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008) (orig. proceeding). 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 the trial court's judgment is **affirmed**. See TEX. R. APP. P. 43.2.

As a result of our disposition of this case, Appellant's 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 review of this case by the Texas Court of Criminal Appeals, he must either retain an attorney to file a petition for discretionary review on his behalf or he must file a petition for discretionary review pro se. Any petition for discretionary review must be filed within thirty days from the date of this court's judgment or the date the last timely motion for rehearing was overruled by this court. See TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with the Texas Court of Criminal Appeals. See TEX. R. APP. P. 68.3(a). Any petition for discretionary review should

comply with the requirements of Texas Rule of Appellate Procedure 68.4. *See In re Schulman*, 252 S.W.3d at 408 n.22.

Opinion delivered March 4, 2015.

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

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 4, 2015

NO. 12-13-00350-CR

DAVON ONEYL GRAVES,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 7th District Court
of Smith County, Texas (Tr.Ct.No. 007-0901-13)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., J., Hoyle, and Neeley, J.