

**NOS. 12-14-00314-CR
12-14-00315-CR
12-14-00317-CR**

**IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS**

DANIEL WAYNE MCLEMORE, § *APPEALS FROM THE 402ND*
APPELLANT

V. § *DISTRICT COURT*

THE STATE OF TEXAS, § *WOOD COUNTY, TEXAS*
APPELLEE

***MEMORANDUM OPINION
PER CURIAM***

Daniel Wayne McLemore appeals his two convictions for attempted capital murder of a peace officer and his separate 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). We affirm.

BACKGROUND

Appellant was indicted in five separate cases for offenses related to his involvement in a shootout with law enforcement officers after a domestic dispute with his wife. Appellant pleaded guilty in the three cases that are the subject of this appeal, and also pleaded guilty to the lesser included offenses of deadly conduct in the remaining two cases. The trial court accepted his pleas and the matter proceeded to a consolidated jury trial solely on punishment. The jury assessed Appellant's sentences at nineteen years of imprisonment for both of the attempted capital murder of a peace officer charges, and ten years of imprisonment for the aggravated

assault with a deadly weapon and deadly conduct charges, to be served concurrently. This appeal followed.

ANALYSIS PURSUANT TO *ANDERS V. CALIFORNIA*

Appellant appealed all five cases, but raised issues for our review in only the deadly conduct cases. We issued opinions in those two cases.¹ However, since Appellant had appealed the remaining three cases, but raised no issues in the appeals, we ordered counsel to file a new brief either raising issues in those cases for our review, or to file a brief complying with *Anders v. California* and *Gainous v. State*.

Counsel, after reviewing the record, filed a brief in compliance with *Anders* and *Gainous*. 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 filed a pro se brief in which he complains that (1) he received ineffective assistance of counsel, (2) the trial court failed to provide Appellant his Fourteenth Amendment right of allocution, (3) the prosecutor made improper jury arguments, and (4) the prosecutor made assertions of fact in his opening statement that were not ultimately supported by the record. With respect to his ineffective assistance claims, Appellant contends that counsel failed to hire or request a toxicologist expert, who would have testified that the various drugs he ingested that evening, when mixed together, would cause a sane man to become insane. He also alleges that counsel was ineffective when he failed to inform Appellant of his allocution right, and that counsel failed to object to one of the officer's testimony concerning his interpretation of what a photograph exhibit depicted. We have considered counsel's brief and Appellant's pro se brief, and conducted our own independent review of the appellate record. We found no reversible error. See *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005).

¹ See *McLemore v. State*, No. 12-14-00316-CR, 2015 WL 5139468 (Tex. App.—Tyler Sept. 2, 2015, no pet.).

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 June 30, 2016.

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

JUNE 30, 2016

NO. 12-14-00314-CR

DANIEL WAYNE MCLEMORE,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 402nd District Court
of Wood County, Texas (Tr.Ct.No. 22,001-2013)

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., Hoyle, J. and Neeley, J.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 30, 2016

NO. 12-14-00315-CR

DANIEL WAYNE MCLEMORE,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 402nd District Court
of Wood County, Texas (Tr.Ct.No. 22,002-2013)

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., Hoyle, J. and Neeley, J.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 30, 2016

NO. 12-14-00317-CR

DANIEL WAYNE MCLEMORE,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 402nd District Court
of Wood County, Texas (Tr.Ct.No. 22,004-2013)

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., Hoyle, J. and Neeley, J.