



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

LAQUINTA LASHUN NICKERSON,	§	No. 08-22-00018-CR
Appellant,	§	Appeal from the
v.	§	21st District Court
THE STATE OF TEXAS,	§	of Burleson County, Texas
Appellee.	§	(TC# 14,962)

OPINION

Laquinta Lashun Nickerson pled guilty to aggravated assault with a deadly weapon on March 5, 2018. TEX.PENAL CODE ANN. § 22.02. He also pled true to a prior felony conviction, which enhanced his conviction from a second-degree felony to a first-degree felony. TEX. PENAL CODE ANN. § 12.42. But based on a plea agreement, the trial court deferred adjudicating Nickerson's guilt and placed him on community supervision for five years. The trial court revoked Nickerson's community supervision on November 29, 2021, adjudicated him guilty of aggravated assault with a deadly weapon based on his March 5, 2018, guilty plea, and sentenced him to forty-five year's imprisonment. Nickerson appeals the trial court's findings.

I. FACTUAL AND PROCEDURAL BACKGROUND

A grand jury indicted Nickerson for aggravated assault with a deadly weapon. The State filed a notice to use Nickerson's 2012 conviction of burglary of a habitation to enhance the

aggravated assault charge from a second-degree felony to a first-degree felony. On March 5, 2018, Nickerson entered an open plea of guilty to the charged offense and pled true to the allegation that he had been convicted of burglary of a habitation in 2012. In conjunction with his open plea, Nickerson signed written plea admonishments that adequately admonished him regarding his rights. The written admonishments notified Nickerson that he was pleading guilty to a first-degree felony and that the range of punishment for his offense was a period of confinement of “[l]ife or any term not more than 99 years or less than 5 years” As part of the written admonishments, Nickerson acknowledged that if he violated a term of his community supervision “the Court may assess [him] guilty at any term of confinement and any fine within the entire range of punishment for the original charge for which [Nickerson] pled.” Nickerson acknowledged at his plea hearing that he understood he was pleading guilty to a first-degree felony with a potential sentence of five to ninety-nine years or life in prison. The trial court also explained to Nickerson that if he violated any of the terms of his community supervision, the court would adjudicate his guilty plea and sentence him accordingly. Nickerson acknowledged that he understood. The trial court accepted Nickerson’s guilty plea, deferred adjudicating his guilt, and placed him on community supervision for five years.

The State filed a motion to revoke probation and adjudicate guilt on December 29, 2020. In it, the State alleged that Nickerson had committed sixteen violations of his conditions of community supervision, including committing a sexual assault and aggravated assault with a deadly weapon on September 10, 2020. The State also alleged, amongst other things, that Nickerson had violated his conditions of community supervision by drinking alcohol, had failed to report to his community supervision officer or an administrative hearing on four occasions, and moved to another county without permission of his supervision officer.

At the motion to adjudicate hearing, Nickerson denied that he had committed sexual assault or aggravated assault. He also denied failing to report to his community supervision officer on one of the days alleged by the State. Nickerson pled true to the remaining thirteen violations. After hearing evidence, which was primarily related to the alleged sexual assault and aggravated assault, the trial court found that Nickerson violated the conditions of his community supervision, revoked community supervision, adjudicated him guilty of aggravated assault with a deadly weapon based on his March 5, 2018, guilty plea, and sentenced him to forty-five years in prison. This appeal followed.

II. FRIVOLOUS APPEAL

Nickerson's court-appointed appellate counsel has filed an *Anders* brief. *See Anders v. California*, 386 U.S. 738, 744 (1976); *Gainous v. State*, 436 S.W.2d 137 (Tex.Crim.App. 1969). In *Anders*, the United States Supreme Court recognized that counsel, though appointed to represent the appellant in an appeal from a criminal conviction, has no duty to pursue a frivolous matter on appeal. *Anders*, 386 U.S. at 744. Counsel was therefore permitted to withdraw after informing the court of his conclusion and the effort made in arriving at that conclusion. *Id.*

Counsel in this case has concluded that, after a thorough review of the record, Nickerson's appeal is frivolous. His brief meets the requirements of *Anders* by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See Anders*, 386 U.S. at 744. In accordance with *Anders*'s requirements, counsel has moved to withdraw. Additionally, counsel notified the Court in writing that he delivered a copy of the brief and motion to withdraw to Nickerson, and he has advised Nickerson of his right to review the record and file a pro se brief. *Kelly v. State*, 436 S.W.3d 313, 318-20 (Tex.Crim.App. 2014) (setting forth duties of counsel). He also notified Nickerson of his right to seek discretionary

review in the Texas Court of Criminal Appeals if this Court finds the appeal is frivolous. Counsel provided Nickerson with a motion for pro se access to the appellate record so he could obtain the necessary records to file a brief. He also provided Nickerson with a copy of the reporter's record and clerk's record.

Nickerson filed a pro se brief in response. The reviewing court has two choices when faced with both an *Anders* brief and a pro se brief. *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex.Crim.App. 2005). An appellate court may determine either: (1) "that the appeal is wholly frivolous and issue an opinion explaining that it has reviewed the record and finds no reversible error[,]": or (2) "that arguable grounds for appeal exist and remand the cause to the trial court so that new counsel may be appointed to brief the issues." *Id.* Merits of the issues are not addressed in *Anders* briefs or pro se responses. *Id.*

We have thoroughly reviewed the record, counsel's brief, and Nickerson's pro se brief in this case, and we agree with counsel's professional assessment that the appeal is frivolous and without merit. Further, we find nothing in the record that might arguably support the appeal and find appointment of new counsel to re-brief the appeal unnecessary. *Cf. Stafford v. State*, 813 S.W.2d 503, 511 (Tex.Crim.App. 1991) (en banc). Because there is nothing in the record that might arguably support the appeal, a further discussion of the arguable grounds advanced in counsel's *Anders* brief would add nothing to the jurisprudence of the State.

III. MOTION TO WITHDRAW

Finding Nickerson's counsel has substantially complied with the requirements of *Anders* and *Kelly*, we grant counsel's motion to withdraw. *See Anders*, 386 U.S. at 744; *Kelly*, 436 S.W.3d at 318-20. No substitute counsel will be appointed. Should Nickerson 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 file a pro se petition for discretionary review. 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 is overruled by this Court. *See* TEX.R.APP.P. 68.2. Any petition for discretionary review must be filed in the Court of Criminal Appeals. *See* TEX.R.APP.P. 68.3. Any petition for discretionary review must comply with Rule 68.4 of the Texas Rules of Appellate Procedure.

IV. CONCLUSION

We affirm the trial court's judgment.

JEFF ALLEY, Justice

July 21, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.

(Do Not Publish)