

MODIFY and AFFIRM; Opinion issued January 14, 2013.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-12-00262-CR

LEWIS OLIVER TATE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 204th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F11-53715-Q**

MEMORANDUM OPINION

**Before Justices Bridges, O'Neill, and Murphy
Opinion by Justice O'Neill**

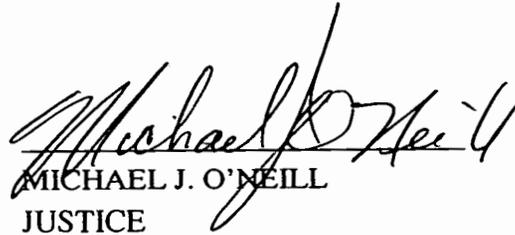
A jury convicted Lewis Oliver Tate of aggravated robbery with a deadly weapon, found two enhancement paragraphs true, and assessed punishment at forty-five years' imprisonment. *See* TEX. PENAL CODE ANN. § 29.03(a)(2) (West 2011). On appeal, appellant's attorney filed a brief in which she concludes the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967). The brief presents a professional evaluation of the record showing why, in effect, there are no arguable grounds to advance. *See High v. State*, 573 S.W.2d 807, 811 (Tex. Crim. App. [Panel Op.] 1978). Counsel delivered a

copy of the brief to appellant. We advised appellant of his right to file a pro se response, but he did not file a pro se response.

We have reviewed the record and counsel's brief. See *Bledsoe v. State*, 178 S.W.3d 824, 827 (Tex. Crim. App. 2005) (explaining appellate court's duty in *Anders* cases). We agree the appeal is frivolous and without merit. We find nothing in the record that might arguably support the appeal.

Although not an arguable issue, we note the record shows appellant pleaded not true to two enhancement paragraphs during the punishment phase, and the jury found the two enhancement paragraphs true. The judgment, however, recites "N/A" for the plea and findings on each enhancement paragraph. We modify the judgment to show appellant pleaded not true to two enhancement paragraphs and the jury found the enhancement paragraphs true. See TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref'd).

As modified, we affirm the trial court's judgment.


MICHAEL J. O'NEILL
JUSTICE

Do Not Publish
TEX. R. APP. P. 47

120262F.U05



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

LEWIS OLIVER TATE, Appellant

No. 05-12-00262-CR V.

THE STATE OF TEXAS, Appellee

Appeal from the 204th Judicial District
Court of Dallas County, Texas (Tr.Ct.No.
F11-53715-Q).

Opinion delivered by Justice O'Neill,
Justices Bridges and Murphy participating.

Based on the Court's opinion of this date, the trial court's judgment is **MODIFIED** as follows:

The section entitled "Plea to 1st Enhancement Paragraph" is modified to show "Not True."

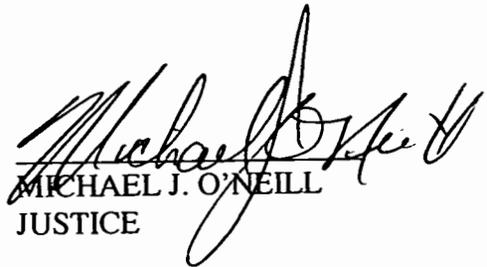
The section entitled "Findings on 1st Enhancement Paragraph" is modified to show "True."

The section entitled "Plea to 2nd Enhancement Paragraph" is modified to show "Not True."

The section entitled "Findings on 2nd Enhancement Paragraph" is modified to show "True."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered January 14, 2013.


MICHAEL J. O'NEILL
JUSTICE