

**MODIFY and AFFIRM; and Opinion Filed August 2, 2013.**



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

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**No. 05-13-00023-CR**

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**MICHAEL CARL KELLEY, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 194th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. F12-61149-M**

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**MEMORANDUM OPINION**

Before Justices O'Neill, Francis, and Fillmore  
Opinion by Justice O'Neill

Michael Carl Kelley waived a jury and pleaded not guilty to burglary of a building. *See* TEX. PENAL CODE ANN. § 30.02 (West 2011). After the trial court found appellant guilty, appellant pleaded true to two enhancement paragraphs. The trial court assessed punishment at four years' imprisonment and a \$1,500 fine. 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 offense date recited in the trial court's judgment is incorrect. The indictment stated the offense occurred on January 7, 2012. Prior to the plea hearing, the trial court granted the State's motion to amend the indictment by changing the offense date to October 7, 2012. The judgment, however, recites the date of the offense was January 7, 2012. We modify the trial court's judgment to show the date of the offense was October 7, 2012. *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/

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MICHAEL J. O'NEILL

JUSTICE

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TEX. R. APP. P. 47

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

JUDGMENT

MICHAEL CARL KELLEY, Appellant

No. 05-13-00023-CR V.

THE STATE OF TEXAS, Appellee

Appeal from the 194th Judicial District  
Court of Dallas County, Texas (Tr.Ct.No.  
F12-61149-M).

Opinion delivered by Justice O’Neill,  
Justices Francis and Fillmore participating.

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

The section entitled “Date of Offense” is modified to show “October 7, 2012.”

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

Judgment entered August 2, 2013.

/Michael J. O’Neill/

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MICHAEL J. O’NEILL

JUSTICE