

Reverse and Remand in part; Affirmed in part and Opinion Filed October 2, 2017



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

**No. 05-16-01198-CR
No. 05-16-01199-CR
No. 05-16-01200-CR**

**JUAN GONZALES, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 292nd Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F15-59544-V, F16-30853-V, F16-30859-V**

MEMORANDUM OPINION

Before Justices Francis, Myers, and Whitehill
Opinion by Justice Francis

Juan Gonzales appeals his convictions for possession with intent to deliver methamphetamine, burglary of a building, and assault/family violence enhanced by a prior assault/family violence conviction. In the first two cases, we affirm the trial court's judgments; in the third case, we reverse the trial court's judgment and remand to the trial court for a new punishment hearing.

In cause no. 05-16-01198-CR, appellant was indicted for the second-degree felony offense of possession with intent to deliver methamphetamine in an amount of one gram or more but less than four grams. TEX. HEALTH & SAFETY CODE ANN. § 481.12(a), (c) (West 2017). The indictment also contained two enhancement paragraphs, elevating the punishment range to habitual offender. *See* TEX. PENAL CODE ANN. § 12.42(d) (West Supp. 2016). In cause no. 05-

16-01199-CR, appellant was indicted for the state-jail felony offense of burglary of a building. *Id.* § 30.02(a)(1), (c)(1) (West 2011). The indictment also contained two enhancement paragraphs which elevate the punishment range to a second-degree felony. *See id.* § 12.425(b) (West Supp. 2016). And in cause no. 05-16-01200-CR, appellant was indicted for the third-degree felony offense of assault/family violence with a previous assault/family violence conviction. *Id.* § 22.01(a), (b). The indictment contained one enhancement paragraph which elevates the punishment range to a second-degree felony. *See id.* § 12.42(a).

In a single proceeding, appellant waived a jury in all three cases, pleaded guilty to the charges in each indictment, and pleaded true to the enhancement paragraphs contained in each indictment. The trial court passed the cases for a presentence investigation report. During the punishment phase, the trial court took judicial notice of a forensic domestic violence risk evaluation, a presentence report. After hearing testimony from several witnesses, the trial court found appellant guilty in each case and sentenced appellant to prison for ten years in the burglary of a building case and forty years each for the remaining two offenses.

In the possession with intent to deliver and the burglary of a building cases, appellant's attorney filed a brief in which she concludes the appeals are 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, 811–12 (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. *See Kelly v. State*, 436 S.W.3d 313, 319–21 (Tex. Crim. App. 2014) (noting appellant has right to file pro se response to *Anders* brief filed by counsel).

We have reviewed the record and counsel’s brief. *See Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005) (explaining appellate court’s duty in *Anders* cases). We agree the appeals are frivolous and without merit. We find nothing in the record that might arguably support the appeals.

In the assault/family violence case, appellant contends the trial court’s forty-year sentence was outside the range of punishment and is therefore illegal and void. Appellant asks us to reverse the trial court’s judgment and remand that case for a new punishment hearing. The State concurs.

The record shows appellant was indicted for the third-degree felony offense of assault/family violence with a previous assault/family violence conviction. The enhancement paragraph included in the indictment elevates the range of punishment to a second-degree felony range of two to twenty years in prison and an optional fine not to exceed \$10,000. TEX. PENAL CODE ANN. § 12.33 (West 2011). Appellant’s forty-year sentence is clearly outside the applicable range of punishment and is therefore void. *See Mizell*, 119 S.W.3d 804, 806 (Tex. Crim. App. 2003). We sustain appellant’s issue.

In cause numbers 05-16-01198-CR and 05-16-01199-CR, we affirm the trial court’s judgments. In cause no. 05-16-01200-CR, we reverse the trial court’s judgment and remand the case to the trial court for a new punishment hearing.

/Molly Francis/
MOLLY FRANCIS
JUSTICE

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

JUDGMENT

JUAN GONZALES, Appellant

No. 05-16-01198-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F15-59544-V.

Opinion delivered by Justice Francis.

Justices Myers and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered October 2, 2017.



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

JUDGMENT

JUAN GONZALES, Appellant

No. 05-16-01199-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F16-30853-V.

Opinion delivered by Justice Francis.

Justices Myers and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered October 2, 2017.



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

JUDGMENT

JUAN GONZALES, Appellant

No. 05-16-01200-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F16-30853-V.

Opinion delivered by Justice Francis.

Justices Myers and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **REVERSED** and we **REMAND** to the trial court for a new punishment hearing.

Judgment entered October 2, 2017.