

MODIFY and AFFIRM; and Opinion Filed November 1, 2018.



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

No. 05-18-00339-CR

**DANIEL JOSEPH SHAW, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 291st Judicial District Court
Dallas County, Texas
Trial Court Cause No. F17-25541-U**

MEMORANDUM OPINION

Before Justices Stoddart, Whitehill, and Boatright
Opinion by Justice Boatright

Appellant Daniel Joseph Shaw waived a jury trial and pleaded guilty to possession of heroin in an amount of one gram or more but less than four grams. Appellant also pleaded true to one enhancement paragraph contained in the indictment. After finding appellant guilty and the enhancement paragraph true, the trial court assessed punishment at two years' imprisonment.

On appeal, appellant's attorney filed a brief in which he 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, 812 (Tex. Crim. App. [Panel Op.] 1978) (determining whether brief meets requirements of *Anders*). 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 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 trial court’s judgment incorrectly recites the plea to the enhancement paragraph and the finding on that paragraph as “N/A.” The record shows appellant entered a plea of true to the enhancement paragraph and the trial court found the enhancement paragraph true. On our own motion, we modify the section of the judgment entitled “plea to 1st enhancement paragraph” to show “true,” and the section entitled “findings on 1st enhancement paragraph” to show “true.” *See* TEX. R. APP. P. 43.2(b) (allowing courts of appeals to modify judgments); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref’d) (explaining that courts of appeals may modify incorrect judgments without the request of any party).

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

/Jason Boatright/

JASON BOATRIGHT
JUSTICE

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TEX. R. APP. P. 47

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

DANIEL JOSEPH SHAW, Appellant

No. 05-18-00339-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F17-25541-U.
Opinion delivered by Justice Boatright.
Justices Stoddart and Whitehill
participating.

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

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

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

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

Judgment entered this 1st day of November, 2018.