Affirm and Opinion filed August 5, 2020

In The

Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00685-CR

ANTHONY DEWAYNE JAMERSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1857615-V

MEMORANDUM OPINION

Before Chief Justice Burns, and Justices Molberg and Carlyle
Opinion by Justice Molberg

Anthony DeWayne Jamerson was charged by indictment with aggravated robbery by committing theft of property while causing injury to a person sixty-five years of age or older, by striking the victim with his hands, on September 13, 2018. The indictment alleged one enhancement paragraph for a prior felony conviction. On February 15, 2019, the State filed notice of intent to enhance punishment range "using prior felony conviction." In the first enhancement paragraph of the notice of intent, the State alleged that before the commission of the primary offense, Jamerson was convicted on September 12, 2011, in the 283rd Judicial District Court of Dallas

County, Texas, in Cause No. F10-62120, of the felony offense of burglary of a habitation. In the second enhancement paragraph of the notice of intent, the State alleged that before the commission of the primary offense, Jamerson was convicted on April 17, 1992, in the District Court of Oklahoma County, Oklahoma, in Cause No. Cf-91-5345, of the offense of unauthorized use of a motor vehicle. At trial, Jamerson was arraigned on and he pleaded not true to the two enhancements. At the commencement of the trial on the merits, the trial court granted Jamerson's motion to appear pro se, and Jamerson represented himself with appointed counsel acting as standby counsel.[1] A jury convicted Jamerson as charged, found the two enhancement paragraphs to be true,[2] and assessed punishment at seventy-five years' confinement. The judgment incorrectly reflects there were no enhancement paragraphs and no findings on any enhancement paragraphs.

Jamerson filed a motion for new trial, which was denied by operation of law. After Jamerson filed notice of appeal, his court-appointed appellate counsel filed a motion to withdraw and an *Anders* brief stating he had examined the record and no

[1] Prior to the State's opening statement and out of the presence of the jury, the trial judge asked Jamerson why he wanted to represent himself, told Jamerson "it's almost never a good idea for a defendant to represent himself" and he "strongly advis[ed] against it," and appointed stand-by counsel. Prior to Jamerson's opening statement and out of the presence of the jury, the trial court admonished Jamerson about the dangers and disadvantages of waiving the right to counsel and proceeding pro se under *Faretta v. California*, 422 U.S. 806, 835–36 (1975).

[2] The jury charge on punishment incorrectly stated "paragraph two" and "paragraph three" of the "indictment" alleged two enhancement paragraphs for prior felony convictions. However, the jury charge correctly stated the two enhancements alleged in the State's February 15, 2019 notice of intent to enhance punishment range, for burglary of a habitation and for unauthorized use of a motor vehicle. Jamerson did not object to the jury charge on punishment.

arguable grounds for appeal exist. *See Anders v. California*, 386 U.S. 738, 744 (1967). Jamerson filed a pro se response and an amended pro se response in which he raises three issues on appeal. The State did not file a response brief.

For the reasons stated below, we reform the judgment to reflect the State alleged two enhancements, Jamerson pleaded not true to the enhancements, and the jury found the two enhancements were true. As reformed, we affirm the trial court's judgment. We grant appellate counsel's motion to withdraw.

ANALYSIS

When appellate counsel is appointed to represent an indigent defendant, "his only justification for filing an *Anders* brief is his ethical obligation to avoid burdening the courts with wholly frivolous appeals." *Kelly v. State*, 436 S.W.3d 313, 318 (Tex. Crim. App. 2014). To this end, a proper *Anders* brief "reflects the fact that the appointed attorney has adequately researched the case before requesting to withdraw from further representation." *In re Schulman*, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008). Prior to filing an *Anders* brief, counsel must master the record and the evidence and make a "legally correct determination that the appeal is frivolous." *Id.* After court-appointed appellate counsel files an *Anders* brief asserting that no arguable grounds for appeal exist, the reviewing court must independently examine the record to determine whether an appeal is "wholly frivolous." *Anders*, 386 U.S. at 744. An appeal is wholly frivolous when it lacks

any basis in law or fact; an argument is frivolous if it cannot conceivably persuade the court. *Crowe v. State*, 595 S.W.3d 317, 319 (Tex. App.—Dallas 2020, no pet.).

The Court of Criminal Appeals has held that when a court of appeals receives an *Anders* brief and a pro se response, the reviewing court has two choices. *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). After conducting an independent examination of the record, "[the appellate court] may determine that the appeal is wholly frivolous and issue an opinion explaining that it has reviewed the record and finds no reversible error[.] Or, it may determine 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.* (internal citations omitted). The appellate court does not address the merits of each claim raised in an *Anders* brief or in a pro se response when it has determined there are no arguable grounds for review. *Id.* at 827.

In this case, Jamerson's appointed counsel filed a motion to withdraw and an *Anders* brief stating he diligently reviewed the entire record, the record presents no reversible error, he is unable to advance any grounds of error that warrant reversal, and the appeal is without merit and wholly frivolous. *See Anders*, 386 U.S. at 744. Counsel's brief meets the *Anders* requirements by presenting a professional evaluation of the record and supplying this Court with references to the record and legal authority. *Id.*

We have independently reviewed the entire record in this appeal, and we conclude that no reversible error exists in the record, there are no arguable grounds for review, and, therefore, the appeal is wholly frivolous. *See Anders*, 386 U.S. at 744 (reviewing court, and not counsel, determines—after full examination of proceedings—whether appeal is wholly frivolous); *Garner v. State*, 300 S.W.3d 763, 767 (Tex. Crim. App. 2009) (reviewing court must determine whether arguable grounds for appeal exist). Jamerson may challenge our conclusion that there are no arguable grounds for appeal by filing a petition for discretionary review in the Texas Court of Criminal Appeals. *See Bledsoe*, 178 S.W.3d at 827.

MODIFICATION OF JUDGMENT

We may modify a trial court's written judgment to correct a clerical error when we have the necessary information to do so. *See Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd). The trial court's judgment in this case reflects there were no alleged enhancements, and there were no findings on any enhancements. The record reflects, however, that Jamerson pleaded not true to two enhancements alleged by the State, and the jury found the enhancements were true. Accordingly, we modify the trial court's judgment to reflect the State alleged two enhancements, Jamerson pleaded not true to both alleged enhancements, and the jury found both alleged enhancements were true.

As modified, we affirm the trial court's judgment, and we grant appellate counsel's motion to withdraw. *See* TEX. R. APP. P. 43.2(b). Appellate counsel immediately must send the required notice to Jamerson and file a copy of that notice with the Clerk of this Court. *See* TEX. R. APP. P. 6.5(c).

/Ken Molberg//
KEN MOLBERG
JUSTICE

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TEX. R. APP. P. 47

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

ANTHONY DEWAYNE JAMERSON, Appellant	On Appeal from the 292nd Judicial District Court, Dallas County, Texas Trial Court Cause No. F-1857615-V.
No. 05-19-00685-CR V.	Opinion delivered by Justice Molberg. Chief Justice Burns and Justice Carlyle participating.
THE STATE OF TEXAS, Appellee	

Based on the Court's opinion of this date, we **MODIFY** the judgment of the trial court to reflect the State alleged two enhancements, appellant pleaded not true to both alleged enhancements, and the jury found both alleged enhancements were true. As modified, we **AFFIRM** the trial court's judgment.

Judgment entered this 5th day of August, 2020.