

Modify and affirm as modified; Opinion Filed November 4, 2020



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

No. 05-19-01151-CR

MATTHEW GERTH, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 283rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1875681-T**

MEMORANDUM OPINION

Before Justices Myers, Nowell, and Evans
Opinion by Justice Nowell

Matthew Gerth pleaded guilty to aggravated assault with a deadly weapon causing serious bodily injury to a person with whom he was in a dating relationship and was sentenced to life imprisonment.

On appeal, appellant's attorney filed a brief concluding the appeal is wholly frivolous and without merit. *See Anders v. California*, 386 U.S. 738 (1967). However, appellant's attorney requests that we modify the judgment to correct the date on which sentence was imposed. Appellant filed a pro se response in which he raised two issues arguing the trial court failed to ensure appellant was able to exercise his constitutional right to testify on his own behalf and he suffered

ineffective assistance of counsel. In its brief, the State responded to appellant's arguments and also requested we modify the judgment to reflect the correct name of the offense for which appellant was convicted.

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 (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.* at 826-27 (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.

We have independently reviewed the entire record in this appeal, including the issues raised in appellant's pro se response. We conclude 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).

Although not arguable issues, we agree with appellate counsel and the State that the trial court’s judgment incorrectly recites the date sentence was imposed and the name of the offense. The record shows appellant was sentenced on September 13, 2019, but the judgment states sentence was imposed “9/13/2018.” Additionally, the judgment states the offense for which appellant was convicted was “Aggravated Assault with a Deadly Weapon/Serious Bodily Injury,” but appellant pleaded guilty to aggravated assault with a deadly weapon causing serious bodily injury to a person with whom he was in a dating relationship.

Appellate courts may modify a trial court’s judgment and affirm it as modified. *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993). This Court “has the power to correct and reform the judgment of the court below to make the record speak the truth when it has the necessary data and information to do so.” *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, writ ref’d). Appellate courts may reform trial court judgments where “the evidence necessary to correct the judgment appears in the record.” *Id.*

Accordingly, we modify the section of the judgments titled “Date Sentence Imposed” to show 9/13/2019, and we modify the section of the judgment titled “Offense for which Defendant Convicted” to show “Aggravated Assault/Family Violence/Deadly Weapon/Serious Bodily Injury.”

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

/Erin A. Nowell/

ERIN A. NOWELL

JUSTICE

Do Not Publish

TEX. R. APP. P. 47.2(b)

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

JUDGMENT

MATTHEW GERTH, Appellant

No. 05-19-01151-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial
District Court, Dallas County, Texas
Trial Court Cause No. F-1875681-T.
Opinion delivered by Justice Nowell.
Justices Myers and Evans
participating.

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

We **MODIFY** the "Date Sentence Imposed" to show 9/13/2019.

We **MODIFY the** "Offense for which Defendant Convicted" to show
"Aggravated Assault/Family Violence/Deadly Weapon/Serious
Bodily Injury."

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 4th day of November, 2020.