Opinion issued July 3, 2008

In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00509-CR

ROGER LEE SCHOOLER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 995602

MEMORANDUM OPINION

Appellant, Roger Lee Schooler, without an agreed punishment recommendation

from the State, pleaded guilty to the offense of aggravated kidnapping.[1] The trial court deferred adjudication of appellant's guilt and placed him on community supervision for five years. The State subsequently filed a motion to adjudicate appellant's guilt based on allegations that he violated the terms and conditions of community supervision by, among other things, failing to report to his community supervision officer, possessing a controlled substance, namely, methadone, and failing to submit to a random urine specimen analysis. Appellant pleaded not true to these allegations. After conducting a hearing on the State's motion to adjudicate appellant's guilt, the trial court found the above allegations true. After conducting a separate punishment hearing, the trial court assessed appellant's punishment at confinement for fifteen years.

Appellant's counsel on appeal has filed a brief stating that the record presents no reversible error and that the appeal is without merit and is frivolous. *See Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967). The brief meets the requirements of *Anders* by presenting a professional evaluation of the record and detailing why there are no arguable grounds for reversal. *Id.*; *see also High v. State*, 573 S.W.2d 807, 810 (Tex. Crim. App. [Panel Op.] 1978). The brief also reflects that counsel delivered a copy of the brief to appellant and advised appellant of his right

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[1] *See* TEX. PENAL CODE ANN. § 20.04(a) (Vernon 2003).

to file a pro se response. *See Stafford v. State*, 813 S.W.2d 503, 510 (Tex. Crim. App. 1991). Appellant has filed a pro se response.

We note that we do not have jurisdiction to consider claims relating to the trial court's determination to proceed with an adjudication of guilt on the original charge. *See Davis v. State*, 195 S.W.3d 708, 710 (Tex. Crim. App. 2006). However, to the extent that appellant pursues an appeal from a judgment adjudicating guilt which relates to the punishment hearing, we do have jurisdiction. *See Kirtley v. State*, 56 S.W.3d 48, 51–52 (Tex. Crim. App. 2001). The brief reflects that appellant's punishment was within the range prescribed by the legislature.

In his pro se response, in one point of error, appellant contends that his trial counsel rendered ineffective assistance. Appellant's brief is replete only with references relating to his trial counsel's performance before the punishment phase of his adjudication hearing, which we do not have jurisdiction to address. *See Davis*, 195 S.W.3d at 710. In regard to any challenge to appellant's punishment, having reviewed the entire record, counsel's brief, and appellant's pro se brief, we agree that the appeal is frivolous and without merit and that there is no reversible error. *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400 (emphasizing that reviewing court—not counsel—determines, after full examination of proceedings, whether case is "wholly frivolous"); *see Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005).

We affirm the judgment of the trial court. We grant counsel's motion to withdraw. *See Stephens v. State*, 35 S.W.3d 770, 771 (Tex. App.—Houston [1st Dist.] 2000, no pet.).[2]

Terry Jennings
Justice

Panel consists of Justices Taft, Jennings, and Bland.

Do not publish. TEX. R. APP. P. 47.2(b).

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[2] Appointed counsel still has a duty to inform appellant of the result of this appeal and that he may, on his own, pursue discretionary review in the Texas Court of Criminal Appeals. *See Bledsoe v. State*, 178 S.W.3d 824, 827 (Tex. Crim. App. 2005); *Downs v. State*, 137 S.W.3d 837, 842 n.2 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd).