Opinion issued November 18, 2010

In The

Court of Appeals

For The

First District of Texas

NO. 01-08-00282-CR

NO. 01-08-00283-CR

JEREMIAH BOYEE MOORE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 400th District Court
Fort Bend County, Texas
Trial Court Case Nos. 42,282 & 42,283

MEMORANDUM OPINION

In appellate cause number 01-08-00282-CR, appellant, Jeremiah Boyee Moore, was charged with the third-degree felony offense of possession of a controlled substance, namely cocaine weighing one gram or more but less than

four grams.[1] In appellate cause number 01-08-00283-CR, appellant was charged with the offense of aggravated robbery.[2] Appellant pleaded guilty without an agreed punishment recommendation from the State to each offense. After a presentence investigation report was prepared, the court held a sentencing hearing. At the end of the hearing, the court found appellant guilty of each offense. The court assessed punishment for the possession of a controlled substance offense at 4 years in prison and at 35 years in prison for the aggravated robbery offense, with the sentences to run concurrently.

Appellant's appointed counsel has filed an *Anders* brief and a motion to withdraw in the aggravated-robbery appeal.[3] Appellant raises one issue for review in the possession of a controlled substance appeal. Appellant contends that the trial court did not properly admonish him before he pleaded guilty to the offense of aggravated robbery.

We affirm the judgment in each appellate cause.

Background

On May 3, 2005, appellant and his friend, Jamarktric Henderson, walked into a Missouri City video store shortly before it closed. Appellant pulled a 9-

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1 *See* TEX. HEALTH & SAFETY CODE ANN. § 481.102(3)(D) (Vernon 2010); TEX. HEALTH & SAFETY CODE ANN. § 481.115(a),(c) (Vernon 2010).

2 *See* TEX. PENAL CODE ANN. §§ 29.02(a)(2), 29.03(a)(2) (Vernon 2003).

3 *See Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967).

millimeter handgun from his clothing and pointed it at two store employees. He told them to give him the money from the cash register. Appellant also told the employees that he would kill them if the police came. The assailants also instructed the employees to open the safe.

Because the safe had a timer system, the employees had to wait 10 minutes to open it. In the meantime, police were dispatched to the store. When they left the store, the two assailants were chased by the police. Appellant ran in front of, and was struck by, a police car. Appellant was arrested and taken to the hospital, after which he recovered. The employees from the store identified appellant as one of the assailants. At the time of his arrest, the police recovered Xanax, marihuana, and crack cocaine from appellant's clothing.

Appellant was charged in two separate indictments with the offenses of aggravated robbery and possession of a controlled substance, namely cocaine weighing one gram or more but less than four grams. Appellant pleaded guilty to both offenses without an agreed sentencing recommendation. The trial court ordered a presentence investigation report to be prepared. After receiving the report, the trial court conducted a sentencing hearing, at the end of which the trial court found appellant guilty of each offense. The trial court sentenced appellant to 4 years in prison for the possession offense and to 35 years in prison for the aggravated robbery offense.

Appellant appealed each judgment of conviction. The trial court appointed appellate counsel to represent appellant.

Possession of Controlled Substance Offense (No. 01-08-00282-CR)

In one issue, appellant challenges the judgment of conviction with respect to the aggravated robbery offense. Appellant asserts, "The trial court erred in accepting Appellants' plea of guilty without complying with the requisites of Article 26.13 of the Code of Criminal Procedure."

Article 26.13 of the Code of Criminal Procedure requires that, before accepting a guilty plea, the trial court must admonish a defendant of (1) the range of punishment; (2) the fact that the State's punishment recommendation is not binding on the court; (3) the limited right to appeal; (4) the possibility of deportation if the defendant is not a United States citizen; and, where applicable, (5) the fact that he may be required to comply with registration requirements under Chapter 62 of the Code. *See* TEX. CODE CRIM. PROC. ANN. art 26.13(a) (Vernon Supp. 2006); *Cardoza v. State*, 238 S.W.3d 416, 419 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

A review of the record indicates that the trial court complied with each of the applicable requirements of article 26.13. We begin by clarifying that requirements two and three do not apply here because this was not a plea with an agreed punishment recommendation by the State. In addition, requirement five

does not apply because possession of a controlled substance is not an offense for which appellant would be required to comply with the sex-offender registration requirements of Chapter 62.

The record shows that the trial court complied with the first and fourth requirements. Appellant was charged with the offense of possession of a controlled substance, namely cocaine weighing one gram or more but less than four grams, which is a third-degree felony. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 481.102(3)(D), 481.115(a),(c) (Vernon 2010). The punishment range for a third-degree felony is confinement in prison for any term of not more than 10 years or less than 2 years and an optional fine not to exceed $10,000. *See* TEX. PENAL CODE ANN. § 12.34 (Vernon Supp. 2010).

Appellant waived the right to have a court reporter record his plea, but the record reflects that the trial court admonished appellant in writing regarding the applicable punishment range. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13(d) (providing admonitions may be oral or written). Appellant placed his initials next to the admonishment, indicating that he understood the punishment range for the offense.

The trial court also informed appellant that if he was not a citizen of the United States his guilty plea might "result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law."

Appellant placed his initials next to the admonition indicating that he understood it. Appellant signed his full name at the end of the plea papers, which included the written admonitions.

Appellant also signed a written stipulation and judicial confession in which he acknowledged that he was mentally competent, he understood all of the admonitions and the consequences of his plea, and he had entered his plea voluntarily. In addition, he also indicated that he had consulted fully with his attorney before entering the plea. Appellant's counsel also signed a document stating that appellant understood the trial court's admonitions and the consequences of his guilty plea.

Based on our review of the record, we conclude that the trial court admonished appellant in accordance with the applicable requirements of article 26.13. We overrule appellant's sole issue in appellate cause number 01-08-00282-CR.

Aggravated Robbery Offense (No. 01-08-00283-CR)

In the aggravated-robbery appeal, appellant's court-appointed counsel has filed an *Anders* brief in which he states that, after a thorough review of the record, the appeal is without merit and is frivolous. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). Counsel has also filed a motion to withdraw.

A. *Anders* Procedure

When we receive an *Anders* brief from a defendant's court-appointed attorney, who asserts that no arguable grounds for appeal exist, we must determine that issue independently by conducting our own review of the entire record. *See id.* (emphasizing that reviewing court—and not counsel—determines, after full examination of proceedings, whether case is "wholly frivolous"); *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). If we determine that arguable grounds for appeal exist, we must grant counsel's motion to withdraw, abate the appeal, and remand the case to the trial court to appoint new counsel to brief the issues. *See Bledsoe v. State*, 178 S.W.3d 824, 827 (Tex. Crim. App. 2005); *Stafford*, 813 S.W.2d at 511. We do not rule on the ultimate merits of the issues raised by appellant in his pro se response. *See Bledsoe*, 178 S.W.3d at 827. If we determine that there are arguable grounds for appeal, an appellant is entitled to have new counsel address the merits of the issues raised. *See id.* "Only after the issues have been briefed by new counsel may [we] address the merits of the issues raised." *Id.*

If, on the other hand, we determine, from our independent review of the entire record, that an appeal is wholly frivolous, we may issue an opinion in which we explain that we have reviewed the record and have found no reversible error. *See id.* at 826–27. While this Court may issue an opinion explaining why the

appeal lacks arguable merit, we are not required to do so. *See Garner v. State*, 300 S.W.3d 763, 767 (Tex. Crim. App. 2009). An appellant may challenge a holding that there are no arguable grounds for appeal by filing a petition for discretionary review in the Court of Criminal Appeals. *See Bledsoe*, 178 S.W.3d at 827 & n. 6.

B. Analysis

In this appeal, the brief filed by appellant's counsel meets the minimum *Anders* requirements by presenting a professional evaluation of the record and discussing why there are no arguable grounds for reversal on appeal. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *see also High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978); *Gainous v. State*, 436 S.W.2d 137, 138 (Tex. Crim. App. 1969). In his *Anders* brief, counsel states that he has thoroughly and conscientiously reviewed the record. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400. Counsel also acknowledges his duty to advance arguable grounds of error if any exist. *See id.* Based on his review of the record, counsel indicates that he could find no errors which would warrant a reversal of appellant's conviction. *See id.*; *Mitchell v. State*, 193 S.W.3d 153, 154 (Tex. App.—Houston [1st Dist.] 2006, no pet.). In this brief, counsel discusses the adequacy of the plea proceedings, supplies us with references to the record, and provides us with citation to legal authorities. *See Stafford v. State*, 813 S.W.2d at 510 n.3; *cf. High v. State*, 573 S.W.2d 807, 811 (Tex. Crim. App. 1978).

Counsel's brief reflects that he delivered a copy of the brief to appellant and informed him of his right to examine the appellate record and to file a response. *See In re Schulman*, 252 S.W.3d 403, 408 (Tex. Crim. App. 2008). More than 30 days have passed, and appellant has not filed a pro se brief. *See id.* at 409 n. 23.

We have reviewed counsel's brief and conducted an independent examination of the complete record. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *Bledsoe*, 178 S.W.2d 826–27; *Mitchell*, 193 S.W.3d at 155. We conclude that no reversible error exists in the record, there are no arguable grounds for review, and that the appeal is wholly frivolous. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *Garner*, 300 S.W.3d at 767; *Bledsoe*, 178 S.W.3d at 826-27; *Mitchell*, 193 S.W.3d at 155.

In addition, we grant counsel's motion to withdraw.[4] *See Schulman*, 252 S.W.3d at 408–09 (discussing requirements to be met before appellate court grants motion to withdraw in *Anders* appeal). Attorney J. Sidney Crowley must immediately send the notice required by Texas Rule of Appellate Procedure 6.5(c) and file a copy of that notice with the Clerk of this Court. *See* TEX. R. APP. P. 6.5(c).

[4] 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, 826–27 (Tex. Crim. App. 2005).

Conclusion

We affirm the judgments of the trial court in appellate cause numbers 01-08-00282-CR and 01-08-00283-CR.

Laura Carter Higley
Justice

Panel consists of Justices Keyes, Higley, and Bland

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