Opinion Issued July 29, 2010

In The

Court of Appeals

For The

First District of Texas

NO. 01-08-00516-CR

REGINALD BELINOSKI, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 1087433

MEMORANDUM OPINION

Appellant, Reginald Belinoski, appeals from a judgment sentencing him to 15 years confinement for Aggravated Sexual Assault of a Child. *See* TEX. PENAL CODE ANN. § 22.021 (Vernon 2008). Appellant's court-appointed counsel has filed an

Anders briefs in which he states that no valid grounds for appeal exist and that appellant's appeal is frivolous. *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967). Appellant filed a pro se response. We conclude no reversible error exists and affirm.

Background

Appellant, Reginald Belinoski, pleaded guilty to the offense of aggravated sexual assault of a child. Pursuant to a plea bargain agreement, the trial court deferred adjudication of guilt, placing appellant on community supervision for 10 years. The State subsequently filed a Motion to Adjudicate Guilt to which appellant pleaded true. The State and appellant did not agree to the sentence that the trial court should impose. The trial court found true the State's allegations that appellant had violated the conditions of his community supervision by failing to avoid injurious or vicious habits, found appellant guilty, and sentenced him to confinement for 15 years.

Anders Procedure

Appellant's court-appointed attorney filed a motion to withdraw as counsel and a brief in support of that motion. The brief submitted by appellant's court-appointed counsel states his professional opinion that there are no arguable grounds for reversal on appeal and that any appeal would, therefore, lack merit. *See Anders*,

386 U.S. at 744, 87 S. Ct. at 1400. Counsel's brief meets the minimum *Anders* requirements by presenting a professional evaluation of the record and stating why there are no arguable grounds for reversal on appeal. *See Gainous v. State*, 436 S.W.2d 137, 138 (Tex. Crim. App. 1969).

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. *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400 (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). In conducting our review, we consider any pro se response that the defendant files to his appointed counsel's *Anders* brief. *See Bledsoe v. State*, 178 S.W.3d 824, 826–28 (Tex. Crim. App. 2005).

Our role in this *Anders* appeal is limited to determining whether arguable grounds for appeal exist. *Bledsoe*, 178 S.W.3d at 827. If we determine that arguable grounds for appeal exist, we must abate the appeal and remand the case to the trial court to allow the court-appointed attorney to withdraw. *Id.* The trial court must then either appoint another attorney to present all arguable grounds for appeal or, if the defendant wishes, allow the defendant to proceed pro se. *Id.* We do not

rule on the ultimate merits of the issues raised by appellant in his pro se response. *Id.* If we determine that there are arguable grounds for appeal, appellant is entitled to have new counsel address the merits of the issues raised. *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 the appeal is wholly frivolous, we may affirm the trial court's judgment by issuing an opinion in which we explain that we have reviewed the record and have found no reversible error. *Bledsoe*, 178 S.W.3d at 826–27. The holding that there are no arguable grounds for appeal is subject to challenge by an appellant by a petition for discretionary review filed in the Court of Criminal Appeals. *Id.* at 827 n.6.

In accordance with *Anders* and *Bledsoe*, we have reviewed the record, appellant's appointed counsel's *Anders* brief, and appellant's pro se notice of appeal and motion for new trial and sentence and conclude that no reversible error exists.

Conclusion

We affirm the judgment of the trial court and grant appointed counsel's motion to withdraw.[2]

PER CURIAM

Panel consists of Justices Wilson, Alcala, and Massengale.

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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 Court of Criminal Appeals. *See Bledsoe v. State*, 178 S.W.3d 824, 827 & n.6 (Tex. Crim. App. 2005); *Ex Parte Wilson*, 956 S.W.2d 25, 27 (Tex. Crim. App. 1997); *Stephens v. State*, 35 S.W.3d 770, 771–72 (Tex. App.—Houston [1st Dist.] 2000, no pet.).