Opinion issued September 30, 2010

In The

Court of Appeals

For The

First District of Texas

NO. 01-08-00708-CR

RONNIE CHARLES NUNN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 155th District Court
Austin County, Texas
Trial Court Case No. 2008R-0028

MEMORANDUM OPINION

Appellant, Ronnie Charles Nunn, pleaded no contest, pursuant to an agreed punishment recommendation from the State, to the offense of evading arrest or detention using a vehicle. *See* TEX. PENAL CODE ANN. § 38.04 (Vernon 2003). The trial court assessed punishment at 13 years in prison with credit for 130 days

served, and payment of $1,991.45 in medical bills, of court appointed attorney's fees of $400.00, of court costs of $271.48, and of a crime stopper fee of $50.00. The trial court certified appellant's right to appeal its rulings on appellant's pretrial motions, which included his motion to dismiss the enhancement paragraphs, his motion to quash and exception to the substance of the indictment, and his objection to the state's motion to amend the indictment.

Appellant's court-appointed counsel has filed an *Anders* brief, in which he states that there are no arguable grounds to support an appeal. *See Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967). Appellant has filed a pro se response to his counsel's *Anders* brief in which he asserts (1) that the trial court abused its discretion by allowing an amendment to the indictment; (2) that the trial court failed to properly admonish him; (3) that he knowingly, voluntarily, and intelligently waived his right to cross-examine witnesses; (4) that the imposed punishment violated 311.031(b) of Texas Government Code;[1] (5) that the enhancement paragraphs were legally insufficient; (6) that the indictment did not set forth and allege a crime sufficiently to put him on notice; and (7) that the warrant and the arrest were unlawful.

We affirm the judgment and grant appellant's counsel's motion to withdraw.

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[1] TEX. GOV'T CODE ANN. § 311.031(b) (Vernon 2005).

Anders Procedure

When we receive an *Anders* brief from a defendant's court-appointed attorney asserting 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. *See id.* 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. *See 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. *See id.* We do not rule on the ultimate merits of the issues raised by appellant in his pro se response. *See 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. *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 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. *See id*. at 826–27. Although we 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.

Analysis

In this case, the brief filed by appellant's counsel 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). Appellant's counsel indicates that he has thoroughly reviewed the record. Based on this review, counsel states that he "has found no arguable points of error to raise in an appellate brief in this cause." *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *Mitchell v. State*, 193 S.W.3d 153, 154 (Tex. App.—Houston [1st Dist.] 2006, no pet.). In his *Anders*

brief, counsel discusses the pre-trial proceedings, supplies us with references to the record, and provides us with citation to legal authorities. *Cf. High v. State*, 573 S.W.2d 807, 811 (Tex. Crim. App. 1978) (explaining necessary work product of effective advocate in appellate process). The brief also reflects that counsel delivered a copy of the brief to appellant and informed him of his right to file a response, which appellant has done. *See Stafford*, 813 S.W.2d at 510.

We have reviewed counsel's brief and appellant's pro se response, and we have conducted an independent examination of the record. *See Anders*, 386 U.S. at 744, 97 S. Ct. at 1400; *Bledsoe*, 178 S.W.2d 826–27; *Mitchell*, 193 S.W.3d at 155. Based on this review, we conclude that no reversible error exists in the record and that the appeal is wholly frivolous.

Conclusion

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

PER CURIAM

Panel consists of Chief Justice Radack and Justices Massengale and Mirabal.[3]

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

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[2] Appointed counsel 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.).

[3] The Honorable Margaret Garner Mirabal, Senior Justice, Court of Appeals for the First District of Texas, participating by assignment.