Opinion issued October 21, 2010

In The

Court of Appeals

For The

First District of Texas

NOS. 01-08-00909-CR
01-08-00910-CR

DONALD WAYNE BROOKS JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 248th District Court
Harris County, Texas
Trial Court Case Nos. 1082557 & 1083261

MEMORANDUM OPINION

Appellant, Donald Wayne Brooks Jr., pleaded guilty without an agreed recommendation to two indictments for aggravated robbery.[1] TEX. PENAL CODE ANN. §§ 29.02 –.03 (Vernon 2003). After presentence investigation reports was

[1] The two counts were trial case numbers 1082557 and 1083261, which are appellate cause numbers 01-08-00909-CR and 01-08-00910-CR, respectively.

prepared, the court held a punishment hearing. The court assessed punishment at 60 years' imprisonment for each case to run concurrently.

Appellant filed pro se two applications for writs of habeas corpus requesting to withdraw his guilty pleas, which the trial court construed as timely filed notices of appeal. The trial court found that appellant was indigent and appointed counsel to represent appellant on appeal. After reviewing the record, counsel filed motions to withdraw and *Anders* briefs stating his professional opinion that no valid grounds for appeal existed and that appellant's appeals were frivolous. *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967). Appellant filed pro se responses to his counsel's *Anders* briefs in which he complains about ineffective assistance of counsel resulting in involuntary guilty pleas, prosecutorial misconduct, and cruel and unusual punishment at sentencing.

We affirm.

Anders Procedure

Under *Anders*, once a defendant's court-appointed counsel files a motion to withdraw as counsel and files a brief in which he concludes there exists no arguable grounds for appeal, we review the record and make an independent determination. *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). We consider any pro se response defendant may file to the *Anders* brief, but we do not rule on the ultimate merits of his response. *Downs v. State*, 137 S.W.3d 837, 839 (Tex. App.—Houston [1st

Dist.] 2004, pet. ref'd).

A court of appeals has two options when an *Anders* brief and a subsequent pro se response are filed. Upon reviewing the entire record, the appellate court may determine (1) that the appeal is wholly frivolous and issue an opinion explaining there is no reversible error or (2) that arguable grounds for appeal exist and remand the cause to the trial court for appointment of a new appellate counsel. *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). If we determine there are no arguable grounds for appeal, we affirm the judgment of the trial court and allow the court-appointed attorney to withdraw. *Downs*, 137 S.W.3d at 842. If we determine arguable grounds for appeal exist, we must abate the appeal, remand the case to the trial court, and allow the court-appointed attorney to withdraw. *Stafford*, 813 S.W.2d at 511. The trial court must either appoint another attorney to present all arguable grounds for appeal or allow the defendant to proceed pro se if he desires. *Id.*

Analysis

Appellant's appointed counsel on appeal has filed *Anders* briefs, stating he has found no valid grounds of appeal exist and moves to withdraw as counsel. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400. The briefs meet 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. 1978). The State waived its right to file briefs and

appellant filed pro se responses.

In accordance with *Anders* and *Bledsoe*, we have carefully reviewed the entire appellate record and read the *Anders* briefs and appellant's pro se responses. We conclude no reversible error exists, other than the modifications to the judgments discussed below, and that any appeals would be wholly frivolous. *See Stafford*, 813 S.W.2d at 511.

Reformation of Judgments

We note that the trial court's judgments do not accurately comport with the record in that they do not reflect appellant's right to appeal. "An appellate court has authority to reform a judgment to include an affirmative finding to make the record speak the truth when the matter has been called to its attention by any source." *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992) (citing *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd); *accord Nolan v. State*, 39 S.W.3d 697, 698 (Tex. App.—Houston [1st Dist.] 2001, no pet.) ("An appellate court has the power to correct and reform a trial judgment to make the record speak the truth when it has the necessary data and information to do so."); *see also* TEX. R. APP. P. 43.2(b). The record supports modification of the judgments because the reporter's record reflects that appellant pleaded guilty without agreed recommendations and retained his right to an appeal. Upon notice from this Court, the trial court submitted two supplemental certifications of the

right to appeal correctly indicating, "This was not a plea bargain case, and the defendant has the right of appeal." Accordingly, we modify the trial court's judgments to delete the sentence "APPEAL WAIVED, NO PERMISSION TO APPEAL GRANTED" from the section titled "Furthermore, the following special findings or orders apply."

Conclusion

As modified, we affirm the judgments of the trial court and grant counsel's motions to withdraw.[2]

Margaret Garner Mirabal
Justice

Panel consists of Chief Justice Radack and Justices Massengale and Mirabal.[3]
Do not publish. *See* 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 these appeals 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 (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.