Opinion issued November 4, 2010

In The
Court of Appeals
For The
First District of Texas

NO. 01-08-01012-CR

BRANDON GORDON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 209th District Court
Harris County, Texas
Trial Court Cause Nos. 1064054

MEMORANDUM OPINION

Appellant, Brandon Gordon, pleaded guilty to aggravated robbery without an agreed recommendation. *See* TEX. PENAL CODE ANN. §§ 29.02–.03 (Vernon 2003).

After a sentencing hearing, the trial court assessed punishment at 30 years' confinement in the Texas Department of Criminal Justice, Institutional Division. Appellant filed a timely notice of appeal. Gordon's court-appointed counsel filed a motion to withdraw and an *Anders* brief in which she 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 to his counsel's *Anders* brief in which he contends that his plea was not made voluntarily and intelligently, and that he received ineffective assistance of counsel.

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

Background

Appellant and two accomplices robbed a cash advance business on April 4, 2006 and were arrested 45 minutes later while attempting to rob a second cash advance business. On his arrest, appellant was found with pawn shop receipts for two firearms recovered by law enforcement and a debit card owned by the complainant, Alvaneeta Nelson. Nelson identified appellant and one accomplice at time of their arrest.

Appellant pleaded guilty to the April 4, 2006 aggravated robbery without agreed recommendations. *See* TEX. PENAL CODE ANN. §§ 29.02–.03. Appellant

and his attorney signed his plea and his written admonishments. At the sentencing hearing, appellant's mother, cousin, and aunt all testified as to his good character and stated that he was only involved in the robbery to which he pleaded guilty. Appellant testified that he was diagnosed with bipolar disorder and that he was not on medication at the time of the April 4 robbery. He stated he was on medication and had not experienced a significant episode in six months.

The State presented evidence of disciplinary action against appellant while in prison for fighting and possession of intoxicants, tobacco, and unauthorized equipment. The State also presented evidence implicating appellant in eight similar aggravated robberies of cash advance businesses. At the time of appellant's arrest, law enforcement found two cell phones in his accomplice's car that belonged to witnesses from previous robberies. That same day, Detective L. Roberts conducted a live line-up in which appellant and one accomplice were placed in a line of six individuals. Five witnesses from the other aggravated robberies identified appellant and his accomplice from the live line-up or a video recording of the line-up. Four witnesses also positively identified appellant at the sentencing hearing.

The trial court assessed punishment at 30 years' confinement. Appellant filed a timely notice of appeal. This Court abated the appeal because the original certification incorrectly stated that appellant had waived his right to appeal. The

trial court submitted a supplemental certification acknowledging appellant's right to appeal, found him to be indigent, and appointed an attorney for his appeal.

His appellate attorney filed a motion to withdraw and an *Anders* brief stating that no arguable grounds for appeal exist and any appeal would be frivolous. In his *Anders* response, appellant argues that his plea was not voluntary and intelligent because he is bipolar and he was rushed and without counsel when he signed the admonishments. He also argues he received ineffective assistance of counsel because his attorney allegedly promised him a 15-year-cap if he pleaded guilty, never visited him or properly prepared him before his plea, and failed to ensure he was mentally competent.

Anders Procedure

The brief submitted by appellant's court-appointed counsel states her 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 Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *see In re Schulman*, 252 S.W.3d 403, 409 n.23 (Tex. Crim. App. 2008); *Le v. State*, 186 S.W.3d 55, 56 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

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 the 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 response and conclude that no arguable grounds for appeal exist.

Conclusion

We affirm the judgment of the trial court and grant appointed counsel's motion to withdraw.[1]

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack, Justice Massengale, and Justice Cox.[2]

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

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[1] 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.).

[2] The Honorable Lonnie Cox, Judge of the 56th District Court of Galveston County, participating by assignment.