

Opinion issued November 18, 2010



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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**NO. 01-09-01050-CR**

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**MALDANNO THOMPSON, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 178th District Court  
Harris County, Texas  
Trial Court Cause Nos. 1221613**

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**MEMORANDUM OPINION**

Appellant, Maldanno Thompson, appealed a judgment convicting him of aggravated robbery. *See* TEX. PENAL CODE ANN. §§ 29.02–.03 (Vernon 2003). His court-appointed counsel filed a motion to withdraw and *Anders* brief in which he

states no valid grounds for appeal exist and that any appeal would be frivolous. *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967). Appellant filed no response. We affirm.

### **Background**

Dion Phlegm and his girlfriend were getting out of his car at an apartment complex when a man in a ski mask confronted them with a gun. Phlegm gave appellant his wallet with cash, his driver's license, and an ATM card inside. Appellant pressed his gun into Phlegm's neck for a few seconds then walked away pointing the gun at Phlegm and his girlfriend. In addition to the mask, appellant wore gloves and bulky clothing, so Phlegm was not able to make an identification. Appellant drove away in a red and black Monte Carlo with no license plate, a black stripe near the base, and factory wheels.

Phlegm described the car to law enforcement and appellant was stopped a little over an hour after the robbery. A search of the car found gloves and two ski masks. A search of appellant produced Phlegm's license and bank card, however no gun was found. Appellant was arrested and confessed to the robbery.

Appellant originally pleaded not guilty. He changed his plea to guilty after a jury was impaneled. The trial court orally admonished appellant concerning the consequences of his guilty plea and the range of punishments.

The State presented evidence on the merits through Phlegm and the investigating officer's testimony. The jury was instructed to find appellant guilty and found him so. The punishment phase was conducted before the court without an agreed recommendation concerning punishment. The trial court accepted appellant's plea of true to the enhancement paragraphs of a prior conviction for felony kidnapping. The State admitted a stipulation as to appellant's three prior convictions for kidnapping, possession of cocaine, and a federal gun possession crime. Phlegm and his girlfriend testified as to the impact of the robbery on them. Appellant emphasized his cooperation with law enforcement and admitted his written confession, though pre-trial he filed a motion to suppress those statements. The trial court assessed punishment at 30 years in prison.

### ***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 case is “wholly frivolous”); *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991).

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 any arguable issues. *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 and appellant's appointed counsel's *Anders* brief. We conclude no arguable grounds for appeal exists.

### **Conclusion**

We affirm the judgment of the trial court and grant appointed counsel's motion to withdraw.<sup>1</sup>

### **PER CURIAM**

Panel consists of Chief Justice Radack, Justice Alcala, and Justice Massengale.

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

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<sup>1</sup> 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.).