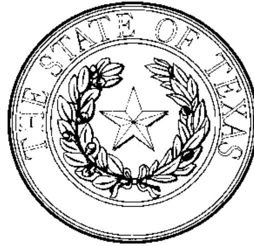
Opinion issued March 3, 2011



In The

Court of Appeals

For The

First District of Texas

NO. 01-10-00062-CR

BRANDY JOHN SLEDGE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Case No. 1057050

MEMORANDUM OPINION

Appellant, Brandy John Sledge, pleaded guilty to the felony offense of Indecency with a Child, and pursuant to the plea bargain agreement, the trial court placed appellant on deferred adjudication community supervision for five years

and assessed a $300 fine. Subsequently, the State moved to revoke and adjudicate appellant's guilt on the basis that appellant had violated the conditions of his community supervision. Appellant pleaded "true" to the allegations that he committed a new offense of Driving While License Suspended and that he failed to pay supervision fees, court ordered fines, laboratory processing fees, and the Sex Assault Program fund as directed by the court. Appellant pleaded "not true" to the allegation that he failed to attend required sex offender treatment sessions. After a hearing, the trial court found the allegations true, found the appellant guilty, and assessed punishment of confinement for 4 years and a $300 fine. The trial court certified appellant's right to appeal, and appellant filed a pro se notice of appeal.

Appellant's counsel on appeal has filed a motion to withdraw, along with an *Anders* brief stating that the record presents no reversible error and therefore the appeal is without merit and is frivolous. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). We grant counsel's motion to withdraw and affirm the trial court's judgment.

An attorney has an ethical obligation to refuse to prosecute a frivolous appeal. *In re Schulman*, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008). If an appointed attorney finds a case to be wholly frivolous, his obligation to his client is to seek leave to withdraw. *Id*. at 407. Counsel's obligation to the appellate court is

to assure it, through an *Anders* brief, that, after a complete review of the record, the request to withdraw is well-founded. *Id*.

We may not grant the motion to withdraw until:

(1) the attorney has sent a copy of his *Anders* brief to his client, along with a letter explaining that the defendant has the right to file a pro se brief within 30 days, and he has ensured that his client has, at some point, been informed of his right to file a pro se petition for discretionary review;

(2) the attorney has informed us that he has performed the above duties;

(3) the defendant has had time in which to file a pro se response; and

(4) we have reviewed the record, the *Anders* brief, and any pro se brief.

See id. at 408–09. If we agree that the appeal is wholly frivolous, we will grant the attorney's motion to withdraw and affirm the trial court's judgment. *See Garner v. State*, 300 S.W.3d 763, 766 (Tex. Crim. App. 2009). If we conclude that arguable grounds for appeal exist, we will grant the motion to withdraw, abate the case, and remand it to the trial court to appoint new counsel to file a brief on the merits. *See Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005).

Counsel's brief meets the *Anders* requirements by presenting a professional evaluation of the record. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *see also High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978). Counsel discusses the evidence, supplies us with references to the record, and provides us with citation to

legal authorities. Counsel indicates that he has thoroughly reviewed the record and that he is unable to advance any grounds of error that warrant reversal. *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.).

Here, counsel's brief reflects that he delivered a copy of the brief to appellant and informed him of his right to examine the appellate record and to file a response. *See Schulman*, 252 S.W.3d at 408. More than 30 days have passed, and appellant has not filed a pro se response. *See id.* at 409 n.23 (adopting 30-day period for response).

We have independently reviewed the entire record, and we conclude that no reversible error exists, that there are no arguable grounds for review, and that therefore the appeal is frivolous. *See Schulman*, 252 S.W.3d at 407 n.12 (explaining that appeal is frivolous when it does not present any argument that could "conceivably persuade the court"); *Bledsoe*, 178 S.W.3d at 826–27 (emphasizing that reviewing court—and not counsel—determines, after full examination of proceedings, whether the appeal is wholly frivolous). Although we may issue an opinion explaining why the appeal lacks arguable merit, we are not required to do so. *See Garner*, 300 S.W.3d at 767. 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 827 & n.6.

We grant counsel's motion to withdraw[1] and affirm the trial court's judgment. Attorney Kyle B. Johnson must immediately send the notice required by Texas Rule of Appellate Procedure 6.5(c) and file a copy of that notice with the Clerk of this Court. *See* TEX. R. APP. P. 6.5(c). We dismiss any pending motions as moot.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Alcala and Bland.

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 Texas Court of Criminal Appeals. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005).