

Opinion issued June 30, 2011



In The
Court of Appeals
For The
First District of Texas

NO. 01-10-00137-CR

JAMARCUS JERMAINE BUTLER, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 177th District Court
Harris County, Texas
Trial Court Case No. 1163407**

MEMORANDUM OPINION

Appellant Jamarcus Jermaine Butler pleaded guilty to the offense of aggravated robbery. *See* TEX. PENAL CODE ANN. § 29.03(a)(2), (a)(3) (West 2011). The trial court deferred a finding of guilt and reset the case for the preparation of a

presentence investigation report and sentencing. After the sentencing hearing, the trial court found Butler guilty and assessed his punishment at five years in prison. Butler gave timely notice of appeal, and counsel was appointed to represent him. His appointed counsel filed an *Anders* brief on the grounds that the appeal of the conviction and sentence in this cause is without merit and wholly frivolous. Butler filed a pro se response. We affirm.

Upon receipt of an *Anders* brief from a defendant's court-appointed attorney asserting that an appeal would be wholly frivolous, the court must conduct an independent review of the record to determine whether arguable grounds for appeal exist. *See Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967) (emphasizing that reviewing court, rather than appointed counsel, determines whether case is "wholly frivolous" after full examination of proceedings); *Stafford v. State*, 813 S.W.2d 503, 509–10 (Tex. Crim. App. 1991). In conducting the review, the court considers any pro se response the appellant files to the appointed counsel's *Anders* brief. *See Bledsoe v. State*, 178 S.W.3d 824, 826 (Tex. Crim. App. 2005).

The court's role in an *Anders* case is limited to determining whether arguable grounds for appeal exist. *See id.* at 826–27. The court does not rule on the ultimate merits of the issues raised by an appellant in his pro se response. *Id.* at 827. If the court determines from its independent review of the record that the

appeal is wholly frivolous, it may affirm the trial court's judgment by issuing an opinion stating that it has reviewed the record and has found no arguable grounds for appeal. *See id.* at 826–27. If, however, the court determines that arguable grounds for appeal exist, the court-appointed attorney must be allowed to withdraw, the appeal must be abated, and the case must be remanded to the trial court. *See id.* The trial court must then either appoint another attorney to present all arguable grounds for appeal or allow the appellant to proceed pro se in the appellate court. *Id.* “Only after the issues have been briefed by new counsel may the court of appeals address the merits of the issues raised.” *Id.*

In his pro se response, Butler contends that he “was promised he would receive a probationary sentence,” and that he entered his plea of guilty with that understanding. He also contends he has requested the plea transcripts to demonstrate that such an agreement was made. We have determined that there is no reporter's record reflecting proceedings on the plea. Moreover, the record of the sentencing hearing suggests that Butler was aware that he might not receive probation. In a prehearing letter to the trial court judge, Butler asked to be placed on probation. On direct examination by his counsel, he confirmed he was asking for deferred adjudication. He confirmed he was aware he could be sentenced to imprisonment for 5 to 99 years or life. The trial court gave Butler the opportunity

to say anything else he wished, yet the transcript reflects nothing supportive of the idea that Butler believed he had been promised probation.

In accordance with *Anders*, 386 U.S. at 744–45, 87 S. Ct. at 1400, and *Bledsoe*, 178 S.W.3d at 826–27, this Court has reviewed the entire record, and we conclude that no arguable grounds for reversal exist. Having reached that conclusion, we affirm the judgment of the trial court and grant Butler’s appointed counsel’s motion to withdraw. Appointed counsel still has a duty to inform Butler of the result of this appeal and of his right to file a pro se petition for discretionary review in the Court of Criminal Appeals. TEX. R. APP. P. 48.4; see *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.).

PER CURIAM

Panel consists of Justices Jennings, Bland, and Massengale.

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