Opinion issued November 17, 2011

In The

Court of Appeals

For The

First District of Texas

NOS. 01-10-00276-CR
01-10-00277-CR

DEANDRE DENSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Case Nos. 1136402 & 1136515

MEMORANDUM OPINION

These are two appeals from judgments convicting appellant Deandre Denson

of aggravated robbery[1] and arson.[2] Denson plead guilty to both offenses and waived a jury on punishment. The trial assessed punishment at life imprisonment for aggravated robbery and 60 years' imprisonment for arson. The signed judgments stated that the sentences were to run concurrently.

The briefs submitted by Denson's court-appointed counsel states his professional opinion that there are no arguable grounds for reversal on appeal and that any appeal would, therefore, be wholly frivolous. *See Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967). Counsel's briefs meet the minimum requirements by presenting a professional evaluation of the record and stating why there are no arguable grounds for reversal on appeal. *See Broadnax v. State*, 473 S.W.2d 468, 469 (Tex. Crim. App. 1971) (citing *Gainous v. State*, 436 S.W.2d 137, 138 (Tex. Crim. App. 1969) (plurality op.)). Denson has not filed pro se responses. The State has waived its opportunity to file briefs.

When this Court receives an *Anders* brief from a defendant's court-appointed attorney who asserts that an appeal would be wholly frivolous, 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

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[1] *See* TEX. PENAL CODE ANN. § 29.03(a)(3) (West 2011) (trial-court case number 1136402 and appellate case number 01-10-00276-CR).

[2] *See* TEX. PENAL CODE ANN. 28.02(a)(2)(D), (E) (West 2011) (trial-court case number 1136515 and appellate case number 01-10-00277-CR).

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). 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, 826–27 (Tex. Crim. App. 2005).

Our role is limited to determining whether arguable grounds for appeal exist. *Id.* 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 issues raised by defendant in his pro se response. *Id.* If we determine that there are arguable grounds for appeal, defendant 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, determined that the appeal is wholly frivolous, and concluded there is no reversible error. *See id.* at 826. The holding that there are no arguable grounds for

appeal is subject to challenge by a defendant by a petition for discretionary review filed in the Court of Criminal Appeals. *Id.* at 827 & n.6.

In accordance with *Anders*, 386 U.S. at 744–45, 87 S. Ct. at 1400, and *Bledsoe*, 178 S.W.3d at 826–27, we have reviewed the record and Denson's appointed counsel's *Anders* briefs, and determine that the appeals are wholly frivolous and conclude that no reversible error exists. Because the judgments incorrectly state "APPEAL WAIVED. NO PERMISSION TO APPEAL GRANTED.", we modify the trial court's judgments to delete that phrase.[3] As so modified, we affirm the judgments. *See* TEX. R. APP. P. 43.2(b). We grant appellant's appointed counsel's motions to withdraw.

[3] We note that the two certifications of defendant's right to appeal correctly reflect that he has the right to appeal. *See* TEX. R. APP. P. 25.2(d).

Appointed counsel still has a duty to (1) send appellant a copy of the opinion and judgment in these cases, (2) notify appellant of any upcoming appellate deadlines not previously disclosed (e.g., to file a pro se motion for rehearing or petition for discretionary review), (3) inform appellant that he may, on his own, file a pro se petition for discretionary review in the Court of Criminal Appeals under Texas Rule of Appellate Procedure 68, and (4) file with the Clerk of this Court within five days from the date of this opinion the documents required by Texas Rules of Appellate Procedure 6.5(c) and 48.4. *See Bledsoe*, 178 S.W.3d at 827 & n.6; *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, Sharp, and Brown.

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