Opinion issued May 26, 2011

In The
Court of Appeals
For The
First District of Texas

NO. 01-10-00549-CR

RICKY JASON ROBERTS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas[1]
Trial Court Cause No. 98898

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[1] This appeal was transferred from the Ninth Court of Appeals to the First Court of Appeals pursuant to an order of transfer by the Texas Supreme Court. *See* TEX. GOV'T CODE ANN. § 73.001 (Vernon 2005).

MEMORANDUM OPINION

Appellant, Ricky Jason Roberts, pleaded guilty to the felony offense of driving while intoxicated with a child passenger. *See* TEX. PENAL CODE ANN. § 49.045 (Vernon Supp. 2010). In accordance with appellant's agreement with the State, the trial court deferred adjudication of guilt and placed appellant on community supervision for five years. Subsequently, the State moved to revoke appellant's community supervision and for an adjudication of appellant's guilt, on the grounds that appellant had violated the conditions of his community supervision. Appellant pleaded "true" to the State's allegations. The trial court found the allegations true, adjudged appellant guilty of the original charge, and assessed punishment at confinement for two years. Appellant timely filed a notice of appeal.

Appellant's court-appointed appellate counsel has filed a motion to withdraw, along with an *Anders* brief stating that the record presents no reversible error and that therefore the appeal is frivolous. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). We affirm the trial court's judgment and grant counsel's motion to withdraw.

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, her obligation to her 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 her *Anders* brief to her client, along with a letter explaining that the defendant has the right to file a pro se brief within 30 days, and she has ensured that her client has, at some point, been informed of his right to file a pro se [petition for discretionary review];
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> (2) the attorney has informed us that she has performed the above duties;
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> (3) the defendant has had time in which to file a pro se response; and
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> (4) we have reviewed the record, the *Anders* brief, and any pro se brief.

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 she 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.).

In his pro se response, appellant seems to complain about the sufficiency of the evidence, asserting that he was not driving at the time arresting officers approached him, and he complains that counsel was ineffective during punishment for not having raised this point. Further, appellant complains that the trial court erred by having failed to consider sentencing him to rehabilitation.

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[2] and affirm the trial court's judgment. Attorney Jack Lawrence 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). All pending motions are denied.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Sharp and Brown.

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

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[2] 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).