Opinion issued June 2, 2011

In The

Court of Appeals

For The

First District of Texas

NOS. 01-09-00628-CR
01-11-00418-CR

CHRISTOPHER JAY LILLIAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 300th District Court
Brazoria County, Texas
Trial Court Case No. 53501 (Count One & Count Two)

MEMORANDUM OPINION

These are two appeals from a judgment revoking deferred-adjudication

community supervision and adjudicating guilt on two counts of sexual assault.[1] TEX. PENAL CODE ANN. § 22.011(a)(2)(A) (count one), (C) (count two) (West Supp. 2010); TEX. CODE CRIM. PROC. ANN. art. 42.12, §§ 5(b), 21, 23 (West Supp. 2010), art. 44.02 (West 2006).

The brief submitted by appellant Christopher Jay Lillian's court-appointed counsel states her 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 brief meets 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.)). Appellant has filed a pro se response. The State has waived its opportunity to file a brief.

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 reviewing court—and not counsel—determines, after full examination of

[1] Trial-court count one is appellate case number 01-09-00628-CR, and trial-court count two is appellate case number 01-11-00418-CR.

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 appeals and remand the cases 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, appellant's appointed counsel's *Anders* brief, and appellant's pro se response to that brief, and determine that the appeal is wholly frivolous and conclude that no reversible error exists. Because the judgment revoking deferred-adjudication community supervision and adjudicating guilt incorrectly identifies the case as being in the 23rd District Court of Brazoria County instead of the 300th District Court of Brazoria County, we modify the trial court's judgment to reflect that the case is in the 300th District Court of Brazoria County. As so modified, we affirm the judgment revoking deferred-adjudication community supervision and adjudicating guilt in both count one and count two. *See* TEX. R. APP. P. 43.2(b). We grant appellant's appointed counsel's motion to withdraw. 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 Chief Justice Radack and Justices Sharp and Brown.

Do not publish.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