Opinion issued September 24, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00260-CR

PATRICK B. DAVENPORT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Case No. 1566080

MEMORANDUM OPINION

Appellant, Patrick B. Davenport, pleaded guilty without an agreed recommendation from the State to the offense of burglary with enhancements for (1) committing the offense in an area that was, at the time of the offense, subject to a declaration of a state of disaster made by the governor under Section 418.014 of the

Government Code; and (2) having previously been finally convicted of a felony. Following a sentencing hearing, the trial court sentenced appellant to fifteen years' imprisonment. This sentence is within the applicable range.[1] The trial court certified that this was not a plea-bargain case, and that appellant had the right of appeal. *See* TEX. R. APP. P. 25.2(a)(2). Appellant timely filed a notice of appeal.

Appellant's appointed counsel on appeal 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 without merit and is frivolous. *See Anders v. California*, 386 U.S. 738 (1967). Counsel's brief meets the *Anders* requirements by presenting a professional evaluation of the record and supplying this Court with references to the record and legal authority. *See id.* at 744; *see also High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978). Counsel indicates that he has thoroughly reviewed the record and that he is unable to advance any grounds of error that warrant reversal.

---

[1] Without enhancements, the offense of burglary offense in this case would be a state jail felony because the offense was not committed in a habitation. *See* TEX. PENAL CODE § 30.02(c)(1). The State's first enhancement for an offense committed in a disaster area enhanced the state jail offense of burglary of a building to a third-degree felony, the next highest felony. *See* TEX. PENAL CODE § 12.50(a), (b)(3). The second enhancement for a prior felony conviction further enhanced the offense from a third-degree felony to a second-degree felony. *See* TEX. PENAL CODE § 12.42(a). Accordingly, the burglary offense in this case was a second-degree felony, subject to a punishment range between 2 to 20 years' imprisonment. *See* TEX. PENAL CODE §12.33 (second-degree felony punishable by 2 to 20 years' imprisonment).

See Anders, 386 U.S. at 744; *Mitchell v. State*, 193 S.W.3d 153, 155 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

Appellant's counsel has certified that he mailed a copy of the motion to withdraw and the *Anders* brief to appellant and informed appellant of his right to file a response and to access the record. *See In re Schulman*, 252 S.W.3d 403, 408 (Tex. Crim. App. 2008). Furthermore, counsel certified that he sent appellant the form motion for pro se access to the records for his response. *See Kelly v. State*, 436 S.W.3d 313, 322 (Tex. Crim. App. 2014). Appellant was provided a copy of the record and filed a pro se response.

Appellant's pro se response asserts that his guilty plea was involuntary due to ineffective assistance of counsel. An ineffective-assistance claim must be "firmly founded in the record" and "the record must affirmatively demonstrate" the meritorious nature of the claim. *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). "Direct appeal is usually an inadequate vehicle for raising such a claim because the record is generally undeveloped." *Menefield v. State*, 363 S.W.3d 591, 593 (Tex. Crim. App. 2012) (quoting *Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005)). As is often the case in direct appeals, the record in this case is undeveloped and cannot support appellant's claim of ineffective assistance of counsel. *See Rylander v. State*, 101 S.W.3d 107, 110 (Tex. Crim. App. 2003). An

application for a writ of habeas corpus is the more appropriate vehicle to raise ineffective assistance of counsel claims. *Id*.

We have independently reviewed the entire record in this appeal, and we conclude that no reversible error exists in the record, that there are no arguable grounds for review, and that therefore the appeal is frivolous. *See Anders*, 386 U.S. at 744 (emphasizing that reviewing court—and not counsel—determines, after full examination of proceedings, whether appeal is wholly frivolous); *Garner v. State*, 300 S.W.3d 763, 767 (Tex. Crim. App. 2009) (reviewing court must determine whether arguable grounds for review exist); *Bledsoe v. State*, 178 S.W.3d 824, 826–28 (Tex. Crim. App. 2005) (reviewing court is not to address merits of each claim raised in *Anders* brief or *pro se* response after determining there are no arguable grounds for review); *Mitchell*, 193 S.W.3d at 155. An appellant may challenge a holding that there are no arguable grounds for appeal by filing a petition for discretionary review in the Texas Court of Criminal Appeals. *See Bledsoe*, 178 S.W.3d at 827 n.6.

Accordingly, we affirm the judgment of the trial court and grant counsel's motion to withdraw.[2] *See* TEX. R. APP. P. 43.2(a). Attorney Clyde H. Williams must

[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).

immediately send the required notice and file a copy of that notice with the Clerk of this Court. *See* TEX. R. APP. P. 6.5(c). We dismiss any other pending motions as moot.

PER CURIAM

Panel consists of Justices Keyes, Lloyd, and Landau.

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