

Opinion issued November 30, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00160-CR

TOMMY GENE GRAHAM, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 177th District Court
Harris County, Texas
Trial Court Case No. 1678667

MEMORANDUM OPINION

Appellant Tommy Gene Graham pleaded guilty to the offense of violation of a protective order or bond condition in connection with the assault of his girlfriend, a third-degree felony. *See* TEX. PENAL CODE. § 25.07(g)(2)(B). Appellant pleaded true to an enhancement paragraph alleging a prior conviction for burglary of a

habitation, which increased the range of punishment to that of a second-degree felony. Appellant signed an acknowledgement that the punishment range was “a term of not more than 20 years or less than 2 years in the Correctional Institutions Division of the Texas Department of Criminal Justice” and a possible fine up to \$10,000. He also acknowledged in writing that he was mentally competent and understood the nature of the proceedings, the charge against him, and the consequences of pleading guilty.¹ The trial court sentenced Appellant to six years’ confinement in the Texas Department of Criminal Justice. Appellant filed a timely notice of appeal.

On appeal, Appellant’s appointed counsel filed a motion to withdraw, along with a supporting brief, stating the record presents no reversible error. He asserts the appeal is without merit and frivolous. *See Anders v. California*, 386 U.S. 738 (1967). Counsel’s brief meets the *Anders* requirements. The brief presents a professional evaluation of the record and provides references to the record and legal authority. *Id.* at 744; *see also High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978). Counsel explains that after thoroughly reviewing the record, he is unable to advance any grounds of error warranting reversal. *See Anders*, 386 U.S. at 744; *Mitchell v. State*, 193 S.W.3d 153, 155 (Tex. App.—Houston [1st

¹ Prior to the entry of his plea and the sentencing hearing, Appellant underwent a competency evaluation, and he was found competent to stand trial.

Dist.] 2006, no pet.). The State waived its right to file a response and Appellant did not respond.²

After conducting an independent review of the entire record on appeal, we conclude there is no reversible error in the record, there are no arguable grounds for review, and 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 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, 826–27 (Tex. Crim. App. 2005) (same); *Mitchell*, 193 S.W.3d at 155 (reviewing court determines whether arguable grounds exist by reviewing entire record). We note an appellant may challenge a holding that there are no arguable grounds for appeal by filing a petition for discretionary review with the Texas Court of Criminal Appeals. *See Bledsoe*, 178 S.W.3d at 827 & n.6.

We affirm the judgment of the trial court and grant counsel’s motion to withdraw.³ Attorney Andrew J. Williams must immediately send Appellant the

² Appellant’s appointed counsel states in his brief that he provided Appellant with a copy of counsel’s motion to withdraw and of his brief; advised Appellant of his right to file a pro se response to the brief; advised Appellant he had a right to review the trial record at no expense and to prepare his own appellate brief; provided Appellant with the form required to obtain a free copy of the record and the address to which the form should be mailed; and advised Appellant of his right to seek discretionary review if this Court should determine the appeal is frivolous.

notice required under Texas Rule of Appellate Procedure 6.5(c) and file a copy of the notice with the Clerk of this Court. *See* TEX. R. APP. P. 6.5(c).

PER CURIAM

Panel consists of Justices Goodman, Rivas-Molloy, and Farris.

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

³ 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 with the Texas Court of Criminal Appeals. *See Ex Parte Wilson*, 956 S.W.2d 25, 27 (Tex. Crim. App. 1997).