



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00185-CR

Kevin Mikel **BRASHEARS**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 144th Judicial District Court, Bexar County, Texas
Trial Court No. 2013CR7982B
Honorable Lorina I. Rummel, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Marialyn Barnard, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: December 20, 2017

MOTION TO WITHDRAW GRANTED; AFFIRMED

Pursuant to a plea agreement with the State, appellant Kevin Mikel Brashears pled nolo contendere to the offense burglary of a habitation with intent to commit assault, enhanced as a repeat offender. In accord with the plea agreement, the trial court placed Brashears on ten years' community supervision and assessed a fine of \$1,500.00. Approximately six months after sentencing, the State filed a motion to revoke community supervision, alleging Brashears violated several conditions of his community supervision. Brashears pled "true" to one allegation, and the State waived and abandoned the other alleged violations. The trial court denied the motion to

revoke, but amended Brashears's community supervision to include a 120-day jail sentence. The State subsequently filed a second motion to revoke community supervision, alleging once again that Brashears violated numerous conditions of his community supervision. As before, Brashears pled true to a single allegation, and the State waived and abandoned the other alleged violations. The trial court accepted the plea of true. It rejected the State's request for a five-year prison sentence and instead sentenced Brashears to four years' confinement. Thereafter, Brashears perfected this appeal.

Brashears's court-appointed appellate attorney filed a motion to withdraw and a brief in which he raises no arguable points of error and concludes this appeal is frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967), *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978), and *Gainous v. State*, 436 S.W.2d 137 (Tex. Crim. App. 1969). Brashears was provided with a copy of the brief and informed of his right to obtain a copy of the appellate record and file his own brief. See *Nichols v. State*, 954 S.W.2d 83, 85–86 (Tex. App.—San Antonio July 23, 1997, no pet.). Appointed counsel provided Brashears with a form which he could sign, date, and file with this court in order to obtain a copy of the record. See *Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014). Brashears filed neither a request for the record nor a pro se brief.

After reviewing the record and counsel's brief, we find no reversible error and agree with counsel the appeal is wholly frivolous. See *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). We therefore grant the motion to withdraw filed by Brashears's counsel and affirm the trial court's judgment. See *id.*; *Nichols v. State*, 954 S.W.2d 83, 86 (Tex. App.—San Antonio 1997, no pet.); *Bruns v. State*, 924 S.W.2d 176, 177 n.1 (Tex. App.—San Antonio 1996, no pet.).

No substitute counsel will be appointed. Should Brashears wish to seek further review of this case in the Texas Court of Criminal Appeals, he must either retain an attorney to file a petition

for discretionary review or file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days after either the day our judgment is rendered or the day the last timely motion for rehearing or timely motion for en banc reconsideration is overruled by this court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with the clerk of the Texas Court of Criminal Appeals. *See id.* R. 68.3. Any petition for discretionary review must comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. *See id.* R. 68.4.

Marialyn Barnard, Justice

DO NOT PUBLISH