



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00458-CR

David Lee **WILLINGHAM**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 175th Judicial District Court, Bexar County, Texas
Trial Court No. 2010CR10435
Honorable Catherine Torres-Stahl, Judge Presiding¹

Opinion by: Irene Rios, Justice

Sitting: Karen Angelini, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: September 12, 2018

AFFIRMED

David Lee Willingham pleaded guilty to the offense of possession of marijuana (4 oz. to 5 lbs.). Willingham additionally pleaded true to two enhancements. Pursuant to the terms of a plea bargain agreement, the trial court assessed punishment at six years' imprisonment, suspended in favor of six years' community supervision. On March 1, 2017, the State filed a motion to revoke Willingham's community supervision. Following a hearing held on June 29, 2017, the trial court revoked Willingham's community supervision and assessed punishment at five years'

¹ The Honorable Charles Ramsey presided over the June 29, 2017 revocation hearing by assignment.

imprisonment. Because we conclude this appeal is frivolous and without merit, we affirm the trial court's judgment.

Willingham's court-appointed appellate counsel filed a brief with this court representing that he conducted a professional evaluation of the record and determined there are no arguable grounds to be advanced on Willingham's behalf. *See Anders v. California*, 386 U.S. 738, 744 (1967). With citations to the record and legal authority, counsel explains why he concluded the appeal is without merit. Counsel states he reviewed the indictment and evidence adduced at trial, as well as the record of the revocation hearing. The brief meets the requirements of *Anders* as it presents a professional evaluation showing why there is no basis to advance an appeal. *Id.* at 744–45; *Stafford v. State*, 813 S.W.2d 503, 509–10, 510 n.3 (Tex. Crim. App. 1991); *High v. State*, 573 S.W.2d 807, 812–13 (Tex. Crim. App. [Panel Op.] 1978).

Counsel provided Willingham with copies of counsel's *Anders* brief and motion to withdraw and informed Willingham of his right to review the record and file his own brief. *See Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014). Additionally, counsel advised Willingham to file a motion in this court if he wished to review the appellate record and enclosed a form motion for that purpose. *See id.*; *Nichols v. State*, 954 S.W.2d 83, 85–86 (Tex. App.—San Antonio 1997, no pet.) (per curiam); *Bruns v. State*, 924 S.W.2d 176, 177 n.1 (Tex. App.—San Antonio 1996, no pet.). Thereafter, we set deadlines for Willingham to file any motion for the record and any *pro se* brief. Willingham neither requested the record nor filed a *pro se* brief.

After reviewing the record and counsel's *Anders* brief, we conclude there is no reversible error and agree this appeal is frivolous and without merit. Accordingly, the judgment of the trial

court is affirmed, and appellate counsel's request to withdraw is granted.² *Nichols*, 954 S.W.2d at 86; *Bruns*, 924 S.W.2d at 177 n.1.

Irene Rios, Justice

DO NOT PUBLISH

² No substitute counsel will be appointed. Should Willingham wish to seek further review of this case by the Texas Court of Criminal Appeals, Willingham must either retain an attorney to file a petition for discretionary review or Willingham must file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days from the later of: (1) the date of this opinion; or (2) the date the last timely motion for rehearing is overruled by this court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed in the Texas Court of Criminal Appeals. *See* TEX. R. APP. P. 68.3. Any petition for discretionary review should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 68.4.