



Fourth Court of Appeals San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00265-CR

Felipe HERNANDEZ,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 365th Judicial District Court, Zavala County, Texas
Trial Court No. 17-12-03717-ZCRAJA
Honorable Amado J. Abascal, III, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Luz Elena D. Chapa, Justice
Beth Watkins, Justice

Delivered and Filed: May 8, 2019

MOTION TO WITHDRAW GRANTED; AFFIRMED AS MODIFIED

Felipe Hernandez pled guilty to bail jumping/failure to appear and pled true to an enhancement allegation. The jury found Hernandez guilty and found the enhancement allegation true, and it recommended a sentence of fifteen years in prison and a \$5000 fine. The trial court imposed sentence in accordance with the jury's verdict. Hernandez timely appealed the judgment.

Hernandez's court-appointed appellate attorney filed a motion to withdraw and a brief in which he concludes this appeal is frivolous and without merit. The brief demonstrates a professional and thorough evaluation of the record and meets the requirements of *Anders v.*

California, 386 U.S. 738 (1967), *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. [Panel Op.] 1978), and *Gainous v. State*, 436 S.W.2d 137 (Tex. Crim. App. 1969). Counsel sent copies of the brief and motion to withdraw to Hernandez and informed him of his rights in compliance with the requirements of *Kelly v. State*, 436 S.W.3d 313 (2014). This court provided appellant a copy of the appellate record and then set a deadline for Hernandez to file a pro se brief. No pro se brief was filed.

We have thoroughly reviewed the record and counsel's brief. We conclude the record presents no arguable grounds for appellate review and the appeal is frivolous. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). However, our review of the record discloses that the written judgment does not accurately reflect the proceedings in that it recites that Hernandez pled "not guilty" and does not reflect the enhancement allegation or finding. We therefore modify the judgment to reflect that Hernandez pled "Guilty" to the offense charged, he pled "True" to an enhancement allegation, and the jury found the enhancement allegation "True." *See French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992) (stating appellate court authorized to reform judgment to "make the record speak the truth"); *Padilla v. State*, No. 04-16-00389-CR, 2017 WL 2791323, at *2-3 (Tex. App.—San Antonio June 28, 2017, no pet.) (mem. op., not designated for publication) (modifying judgment in *Anders* appeal to accurately reflect degree of offense and pleas and findings on enhancement allegations); *Wiedenfeld v. State*, 450 S.W.3d 905, 908 (Tex. App.—San Antonio 2014, no pet.) (modifying judgment in *Anders* appeal to accurately reflect proceedings in trial court).

We grant the motion to withdraw filed by Hernandez's counsel and affirm the trial court's judgment as modified.¹

Luz Elena D. Chapa, Justice

DO NOT PUBLISH

¹ No substitute counsel will be appointed. Should Hernandez wish to seek further review of this case by 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 this opinion is rendered or the last timely motion for rehearing or 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 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.