In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00178-CR

LOUIS WAYNE SCOTT, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 1A District Court
Newton County, Texas
Trial Cause No. ND 5736

MEMORANDUM OPINION

Pursuant to a plea bargain agreement, Louis Wayne Scott, Jr. pleaded guilty to the offense of injury to a child. *See* Tex. Penal Code Ann. § 22.04(a) (West Supp. 2010).[1]

The trial court concluded the evidence was sufficient to find Scott guilty, but deferred further proceedings, placed him on community supervision for five years, and assessed a $2,500 fine. The State subsequently filed a motion to revoke Scott's community

[1]Because the statute, as applied to Scott, has not materially changed since the date of the offense, we cite to the current version of the statute.

supervision alleging Scott failed to report to his supervision officer, committed an offense by possessing contraband and making harassing phone calls while incarcerated, failed to perform community service hours, and failed to pay his fine, supervision fees, and court costs. At the revocation hearing, Scott waived the reading of the alleged violations of his community supervision and presented evidence. After hearing the evidence, including Scott's testimony that he had failed to report, the trial court found that Scott violated the conditions as alleged in the State's motion to revoke. The trial court adjudicated Scott guilty of injury to a child and assessed punishment at six years of confinement in the Texas Department of Criminal Justice Institutional Division. Scott appeals from the revocation of his unadjudicated community supervision.

Scott's appellate counsel filed an *Anders* brief in which he concluded there are no arguable grounds of error. *See Anders v. California*, 386 U.S. 738, 741-42, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Scott subsequently filed a *pro se* brief, in which he apparently claims that the district attorney engaged in misconduct, that Scott received ineffective assistance of counsel, and that the evidence as to one of the alleged violations of his community supervision is insufficient.

As the Court of Criminal Appeals has explained, an appellate court may determine in an *Anders* case either (1) "that the appeal is wholly frivolous and issue an opinion explaining that it has reviewed the record and finds no reversible error"; or (2) "that arguable grounds for appeal exist and remand the cause to the trial court so that new

counsel may be appointed to brief the issues." *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). In *Garner v. State*, 300 S.W.3d 763, 764 (Tex. Crim. App. 2009), the Court held that "when a court of appeals finds no issues of arguable merit in an *Anders* brief, it may explain why the issues have no arguable merit." *Id.* "The provision of analysis [by the appellate court] does not necessarily imply that there is arguable merit" that would necessitate appointment of counsel to brief the issues. *Id.* at 767.

We have reviewed the clerk's record, the reporter's record, the *Anders* brief, and the *pro se* response in this case, and we agree with counsel that no arguable issues support an appeal. *Id.* at 766-67. "An appellate court may not consider factual assertions that are outside the record[.]" *Whitehead v. State*, 130 S.W.3d 866, 872 (Tex. Crim. App. 2004). The appeal appears wholly frivolous. We find it unnecessary to order appointment of new counsel to re-brief the appeal. *Compare Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). The trial court's judgment is affirmed.

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DAVID GAULTNEY
Justice

Submitted on April 5, 2011
Opinion Delivered April 13, 2011
Do Not Publish

Before McKeithen, C.J., Gaultney and Horton, JJ.