

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-12-00118-CR

MARK EDWARD BLANCHETTE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 10-08567**

MEMORANDUM OPINION

Pursuant to a plea bargain agreement, Mark Edward Blanchette pleaded guilty to evading arrest or detention with a motor vehicle. The trial court found the evidence sufficient to find Blanchette guilty, but deferred further proceedings and placed Blanchette on community supervision for three years. The State subsequently filed a motion to revoke Blanchette’s unadjudicated community supervision. Blanchette pleaded “true” to violating two conditions of his community supervision. The trial court found that Blanchette violated the conditions of his community supervision, found Blanchette

guilty of evading arrest or detention with a motor vehicle, and sentenced Blanchette to two years in state jail.

Blanchette's appellate counsel filed a brief that presents counsel's professional evaluation of the record and concludes Blanchette's appeal is frivolous. *See Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). Blanchette filed a *pro se* brief in response. The Court of Criminal Appeals has held that we need not address the merits of issues raised in *Anders* briefs or *pro se* responses. *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). Rather, an appellate court may determine 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." *Id.*

We have determined that Blanchette's appeal is wholly frivolous. We have independently examined the clerk's record and the reporter's record, and we agree that no arguable issues support an appeal. *See id.* Therefore, we find it unnecessary to order appointment of new counsel to re-brief Blanchette's appeal. *Compare Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991).

However, we note that the judgment lists the statute for the offense as "38.04(a)(1)" of the Penal Code, but no such section exists. *See* Tex. Penal Code Ann. § 38.04 (West Supp. 2012). At the time of the offense, section 38.04(a), (b)(1)(B) applied

to the state jail felony offense of evading arrest or detention with a motor vehicle. *See* Tex. Penal Code Ann. § 38.04(a) (West 2012); Act of May 27, 2009, 81st Leg., R.S., ch. 1400, § 4, 2009 Tex. Gen. Laws 4385, 4386 (current version at Tex. Penal Code Ann. § 38.04(b)(1)(B)). Accordingly, we modify the judgment to reflect the statute for the offense as “38.04(a), (b)(1)(B)” of the Penal Code. We affirm the trial court’s judgment as modified.¹

AFFIRMED AS MODIFIED.

STEVE McKEITHEN
Chief Justice

Submitted on September 4, 2012
Opinion Delivered September 12, 2012
Do Not Publish

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

¹Blanchette may challenge our decision by filing a petition for discretionary review. *See* Tex. R. App. P. 68.