

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00139-CR

ROBERT WAYNE HILL, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 221st District Court
Montgomery County, Texas
Trial Cause No. 14-08-09218 CR**

MEMORANDUM OPINION

In this appeal, Robert Wayne Hill’s court-appointed counsel filed a brief in which he contends that no arguable grounds can be advanced to support a decision reversing Hill’s felony conviction for sexual assault of a child. *See* Tex. Penal Code Ann. § 22.011(a)(2)(A) (West 2011). We have reviewed the record, and we

agree with Hill's counsel that no arguable issues exist to support an appeal. *See Anders v. California*, 386 U.S. 738 (1967).

In 2015, following a three-day trial, a jury found Hill guilty of having sexually assaulted a child. *See* Tex. Penal Code Ann. § 22.011(a)(2)(A). Following the punishment phase of his trial, the court sentenced Hill to serve a ten-year prison sentence, and Hill filed a notice of appeal.

On appeal, Hill's counsel filed a brief that presents counsel's professional evaluation of the record. In the brief, Hill's counsel concludes that no arguable errors exist that would support his filing of a merits-based brief in support of Hill's appeal. *See Anders*, 386 U.S. at 744; *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). We granted an extension of time so that Hill could file a *pro se* brief. Hill filed a response, complaining that he received ineffective assistance of counsel during his trial. However, because no motion for new trial was filed, Hill's counsel was not provided an opportunity to explain the choices he made in representing Hill, so the record before us is silent about the strategy Hill's attorney employed in presenting Hill's case to the jury. Consequently, Hill's complaint that he received ineffective assistance cannot be resolved on the record that is currently before us. *See Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005) (requiring

the record to be developed in cases involving ineffective assistance claims in a manner affirmatively demonstrating that the claim has merit).

After reviewing the appellate record, the *Anders* brief filed by Hill's counsel, and Hill's *pro se* response, we agree with counsel's conclusion that any appeal on the current record would be frivolous. Therefore, it is unnecessary to order that Hill be appointed new counsel to re-brief his appeal. *Cf. Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991) (requiring the court of appeals to appoint other counsel only if it determines that there were arguable grounds for the appeal). Given the absence of any arguable error to support the appeal, we affirm the trial court's judgment.¹

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on December 31, 2015
Opinion Delivered July 27, 2016
Do Not Publish

Before Kreger, Horton, and Johnson, JJ.

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