

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00336-CR

CAREY DEXTER BOOKER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 15-21274

MEMORANDUM OPINION

In this appeal, Carey Dexter Booker's¹ appellate counsel filed a brief in which he contends that no arguable grounds can be advanced to support a decision reversing Booker's conviction for aggravated assault. *See* Tex. Penal Code Ann. § 22.02(a)(1) (West 2011). The jury found Booker guilty of aggravated assault.

¹ According to the record, Carey Dexter Booker is also known as Gizmo Booker, Gizmo, and Nookie.

Although aggravated assault is usually punishable as a second-degree felony, based on an enhancement paragraph in the indictment alleging that Booker had previously been convicted of a felony, and the jury's finding that Booker had been convicted of a prior felony offense, the trial court instructed the jury that it could consider a prison sentence ranging between five years to life. *See id.* § 12.42(b) (West Supp. 2016) (providing enhanced penalties for repeat and habitual felony offenders),² § 22.02(b) (West 2011) (providing that a conviction for aggravated assault is generally punishable as a second-degree felony). The jury found that Booker should serve a twenty-five year sentence.

In Booker's appeal, Booker's counsel filed a brief presenting counsel's professional evaluation of the record. In the brief, Booker's counsel concludes that any appeal would be frivolous. *See Anders v. California*, 386 U.S. 738, 744 (1967); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). After receiving the *Anders* brief, we granted an extension of time to allow Booker an opportunity to file a *pro se* response. However, no response was filed.

After reviewing the appellate record and the *Anders* brief filed by Booker's counsel, we agree with counsel's conclusion that an appeal on the current record

² We cite to the current version of the Penal Code, as the amendments made to the cited statute do not affect this appeal.

would be frivolous. Therefore, it is not necessary that we appoint new counsel to re-brief Booker's 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 our conclusion that no arguable error exists to support Booker's appeal, we affirm the trial court's judgment.³

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on May 30, 2017
Opinion Delivered August 16, 2017
Do Not Publish

Before Kreger, Horton, and Johnson, JJ.

³ Booker may challenge our decision in the case by filing a petition for discretionary review. *See* Tex. R. App. P. 68.