COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00035-CR

THOMAS RYAN MILLIGAN APPELLANT

V.

THE STATE OF TEXAS STATE

FROM THE 355TH DISTRICT COURT OF HOOD COUNTY
TRIAL COURT NO. CR12993

MEMORANDUM OPINION[1]

Appellant Thomas Ryan Milligan was indicted and tried for possession of methamphetamine of less than one gram, a state jail felony for which a jury found him guilty and sentenced him to twenty-four months' confinement. *See* Tex. Health & Safety Code Ann. §§ 481.102(6), .115(a), (b) (West 2010); *see also* Tex. Penal Code Ann. § 12.35 (West Supp. 2016).

[1] *See* Tex. R. App. P. 47.4.

Milligan's court-appointed appellate counsel has filed a motion to withdraw as counsel and a brief in support of that motion. Counsel's brief and motion meet the requirements of *Anders v. California* by presenting a professional evaluation of the record demonstrating why there are no arguable grounds for relief. 386 U.S. 738, 87 S. Ct. 1396 (1967). Milligan had the opportunity to file, and did file, a pro se brief. The State did not file a brief but stated in a letter that it agreed with Milligan's counsel that there are no arguable grounds for relief and that the appeal is frivolous.

Once an appellant's court-appointed attorney files a motion to withdraw on the ground that the appeal is frivolous and fulfills the requirements of *Anders*, this court is obligated to undertake an independent examination of the record. *See Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991); *Mays v. State*, 904 S.W.2d 920, 922–23 (Tex. App.—Fort Worth 1995, no pet.). Only then may we grant counsel's motion to withdraw. *See Penson v. Ohio*, 488 U.S. 75, 82–83, 109 S. Ct. 346, 351 (1988).

We have carefully reviewed the record, counsel's brief, and Milligan's pro se brief.

The record reflects that the trial court did not include in its oral pronouncement of sentence any mention of restitution. Yet in the judgment, the trial court ordered that Milligan pay restitution of $180, "payable to

Agency/Agent,"[2] and court costs of $606. A restitution fee of $12 is listed in the bill of costs. *See* Tex. Code Crim. Proc. Ann. art. 42.037(g)(1) (West Supp. 2016).

Because the restitution was not orally pronounced during Milligan's sentencing, *see id.* art. 42.03, § 1(a) (West Supp. 2016), nor was it awarded to a victim of a crime or to a crime victim's compensation fund, *see id.* art. 42.037(a), we delete it from the judgment. *See Taylor v. State*, 131 S.W.3d 497, 502 (Tex. Crim. App. 2004) (stating that when there is a conflict between the written judgment and the oral pronouncement, the oral pronouncement controls); *see also Bray v. State*, 179 S.W.3d 725, 726 (Tex. App.—Fort Worth 2005, no pet.) (en banc); *Haney*, 2015 WL 3458229, at *1. We likewise order the district clerk to delete the erroneous $12 restitution fee from the court costs, resulting in a total court costs figure of $594, and we modify the trial court's order to withdraw funds

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[2]The judgment includes an attached Exhibit "A," entitled, "Restitution List," which states that Milligan owes restitution of $180 to the Texas Department of Public Safety "Re: Lab No. ABI-1410-04114." A Texas Department of Public Safety Crime Laboratory forensic scientist testified that she had tested the contents of the pipe found on Milligan contained in State's Exhibit 11, which is drug test packaging that bears the identifier "ABI-1410-04114." But a testing agency is not the victim of a defendant's drug possession. *See Aguilar v. State*, 279 S.W.3d 350, 353 (Tex. App.—Austin 2007, no pet.) ("The expenses incurred by the Department of Public Safety in testing the methamphetamine found in Aguilar's possession were not sustained as a result of being the victim of a crime."); *see also Haney v. State*, No. 02-14-00238-CR, 2015 WL 3458229, at *1 (Tex. App.—Fort Worth May 28, 2015, no pet.) (mem. op., not designated for publication) (deleting restitution that was not pronounced at sentencing and that was ordered paid to the Texas Department of Public Safety for lab testing performed on the methamphetamine in a drug-possession case).

to reflect this amount. *See Bray*, 179 S.W.3d at 726; *Browne v. State*, No. 02-14-00363-CR, 2015 WL 5770501, at *1 (Tex. App.—Fort Worth Oct. 1, 2015, no pet.) (mem. op., not designated for publication).

We otherwise agree with counsel that this appeal is wholly frivolous and without merit; we find nothing in the record that might arguably support the appeal. *See Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005); *see also Meza v. State*, 206 S.W.3d 684, 685 n.6 (Tex. Crim. App. 2006). Accordingly, we grant counsel's motion to withdraw and affirm the trial court's judgment and order to withdraw as modified above.

/s/ Bonnie Sudderth
BONNIE SUDDERTH
JUSTICE

PANEL: WALKER, MEIER, and SUDDERTH, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: October 20, 2016