COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00060-CR

ROYCE GLENN HOOPER A/K/A ROYCE GLENN JR. HOOPER A/K/A ROYCE HOOPER JR. — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 43RD DISTRICT COURT OF PARKER COUNTY
TRIAL COURT NO. CR15-0644

MEMORANDUM OPINION[1]

A jury found appellant Royce Glenn Hooper a/k/a Royce Glenn Jr. Hooper a/k/a Royce Hooper Jr. guilty of theft of less than $1,500 with two prior theft convictions. *See* Act of May 31, 2015, 84th Leg., R.S., Ch. 1251, § 10, sec. 31.03(e), 2015 Tex. Sess. Law Serv. 4208, 4212 (West) (codified at Tex. Penal

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

Code Ann. § 31.03(e)(4)(D)).[2] At punishment, Hooper pleaded true to the enhancement allegations, and the trial court sentenced Hooper to 10 years' incarceration in the penitentiary. *See* Tex. Penal Code Ann. § 12.425 (West Supp. 2016). This appeal followed.

On August 31, 2016, Hooper's court-appointed appellate counsel filed an *Anders* brief that was later followed by a September 16 motion to withdraw as this court instructed. Considering counsel's brief and motion together and as having been filed contemporaneously, counsel has met the requirements of *Anders v. California* by presenting a professional evaluation of the record demonstrating why there are no arguable grounds for relief. *See* 386 U.S. 738, 87 S. Ct. 1396 (1967). In compliance with *Kelly v. State*, counsel notified Hooper of her motion to withdraw (though roughly ten days after she filed the *Anders* brief), provided him a copy of the brief, informed him of his right to file a pro se response, informed him of his pro se right to seek discretionary review should this court hold the appeal is frivolous, and took concrete measures to facilitate Hooper's review of the appellate record. *See* 436 S.W.3d 313, 319 (Tex. Crim. App. 2014).

On September 15, Hooper filed a "Pro Se Motion for Access to Appellate Record." On September 19, we ordered the trial-court clerk to make a copy of the

[2]Effective September 1, 2015, the legislature increased the amount from $1,500 to $2,500. *See id.* § 31.

record available to Hooper by October 3. On September 20, the trial court clerk filed a letter showing that it had complied with our order.

We then informed Hooper by clerk's letter dated September 27 that his pro se response to the *Anders* brief was due on or before November 28, 2016, and that if he did not file any response on or before that date, we would assume that he did not intend to file a brief.

After Hooper failed to timely file a pro se brief, we sent the State a notice dated December 15, 2016, that its response, if any, to Hooper's counsel's motion to withdraw and *Anders* brief supporting that motion was due January 17, 2017, and that if the State did not file a response on or before that date, we would assume that the State did not intend to file a response.

On April 3, 2017, we informed both parties by clerk's letter that because the State had not filed a brief, we would submit the case to the court without oral argument on April 24.

Because Hooper failed to file a pro se brief for more than six months after his appointed counsel filed the motion to withdraw and the accompanying *Anders* brief—and more than six months after we informed Hooper by clerk's letter that his pro se response was due by November 28, 2016—we consider this appeal without a pro se response to the *Anders* brief filed by Hooper's court-appointed counsel. *See generally Anders*, 386 U.S. at 744, 87 S. Ct. at 1400 (requiring court to allow appellant to file brief raising points but not requiring court to wait for appellant to file brief before setting case for submission); *Deason v. State*, No.

02-15-00213-CR, 2016 WL 1713464, at *1–2 (Tex. App.—Fort Worth Apr. 28, 2016, no pet.) (mem. op., not designated for publication) (deciding case without pro se appellant brief where appellant was given the opportunity to file a brief but did not do so); *Hibler v. State*, No. 02-14-00016-CR, 2015 WL 1407744, at *1 (Tex. App.—Fort Worth Mar. 26, 2015, pet. ref'd) (mem. op., not designated for publication) (same).

As the reviewing court, we must independently evaluate the record to determine whether counsel is correct in determining that the appeal is frivolous. *See Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991); *Mays v. State*, 904 S.W.2d 920, 923 (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 and counsel's brief. We agree with counsel that this appeal is wholly frivolous and without merit; we find nothing in the record that arguably might support an appeal. *See Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005). Accordingly, we grant counsel's motion to withdraw and affirm the trial court's judgment.

/s/ Elizabeth Kerr
ELIZABETH KERR
JUSTICE

PANEL: LIVINGSTON, C.J.; KERR and PITTMAN, JJ.

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

DELIVERED: May 11, 2017