COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00268-CR

MICHAEL HENRY — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 431ST DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NO. F-2013-2115-F

MEMORANDUM OPINION[1]

The trial court found Appellant Michael Henry guilty of assault family violence with one prior conviction, sentenced him to four years' incarceration, and entered judgment accordingly. This appeal followed.

Henry's court-appointed appellate counsel has filed a motion to withdraw and a brief in support of that motion. Counsel avers that in his professional

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

opinion, the appeal is frivolous. Counsel's brief and motion meet the requirements of *Anders v. California* by presenting a professional evaluation of the record and by 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 Henry of his motion to withdraw, provided him a copy of the motion and brief, informed him of his right to file a pro se response, informed him of his right to seek discretionary review should this court hold the appeal is frivolous, and took concrete measures to facilitate Henry's review of the appellate record. *See* 436 S.W.3d 313, 319 (Tex. Crim. App. 2014). This court informed Henry that he could file a pro se response to his counsel's brief, but he did not respond. The State sent a letter stating that it waives response.

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).

In *Anders* cases, appellate courts "have the authority to reform judgments and affirm as modified in cases where there is non-reversible error." *Ferguson v. State*, 435 S.W.3d 291, 293–94 (Tex. App.—Waco 2014, pet. struck) (comprehensively discussing appellate cases that have modified judgments in

Anders cases). We note that here the trial court's judgment of conviction indicates the proper offense of which Henry was charged and convicted in one place, but it indicates the wrong statute for the offense in another. That is, although Henry was indicted under and convicted of assault involving a family member, and the judgment correctly labels the offense as "ASSAULT FV (COUNT I) WITH PRIOR", the judgment incorrectly recites that the statute for the offense is "21.02 Penal Code." The statute for the offense of assault involving a family member is section 22.01, not 21.02. *See* Tex. Penal Code § 22.01 (West Supp. 2016) *compare* Tex. Penal Code § 21.02 (West Supp. 2016). Thus, we modify the judgment by replacing "21.02" with "22.01" to reflect conviction under the correct statute.

We have carefully reviewed the record and counsel's brief, and except for the noted modification to the judgment, we agree with counsel that this appeal is wholly frivolous and without merit—we find nothing in the record that might arguably result in a reversal of Henry's conviction. *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 as modified.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: MEIER, GABRIEL, and SUDDERTH, JJ.

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

DELIVERED: January 26, 2017