# COURT OF APPEALS
**SECOND DISTRICT OF TEXAS**
**FORT WORTH**

**NO. 02-16-00392-CR**

CYNTHIA JANE ANDERSON — APPELLANT

V.

THE STATE OF TEXAS — STATE

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FROM THE 43RD DISTRICT COURT OF PARKER COUNTY
TRIAL COURT NO. CR15-0810

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## MEMORANDUM OPINION[1]

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Appellant Cynthia Jane Anderson appeals her conviction and twelve-year sentence for possession of methamphetamine. Because we agree with Appellant's appointed counsel that this appeal is frivolous, we affirm the trial court's judgment and grant counsel's motion to withdraw.

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

## Background Facts

Pursuant to a charge bargain, Appellant pled guilty to third-degree felony possession of methamphetamine in the amount of one to four grams and true to one enhancement paragraph, elevating her range of punishment to that of a second-degree felony—two to twenty years and a maximum fine of $10,000. *See* Tex. Health & Safety Code Ann. §§ 481.102(6), .115(c) (West 2017) (providing methamphetamine is a penalty group 1 substance and possessing one to four grams of a penalty group 1 substance is a third-degree felony); Tex. Penal Code Ann. § 12.33 (West 2011) (providing range of punishment for second-degree felony), § 12.42(a) (West Supp. 2016) (providing proof of a final prior felony conviction "other than a state jail felony [conviction] punishable under Section 12.35(a)" raises the punishment of a third-degree felony to that of a second-degree felony). In exchange, the State waived two enhancement paragraphs, proof of either of which would have elevated Appellant's range of punishment to 25 to 99 years or life. *See* Tex. Penal Code Ann. § 12.42(d) (West Supp. 2016); *Roberson v. State*, 420 S.W.3d 832, 840–41 (Tex. Crim. App. 2013).[2] After reviewing the presentence investigation report and hearing

[2]We note that the trial court's certification of Appellant's right of appeal does not match the standard form appearing in Appendix D of the Texas Rules of Appellate Procedure. *See* Tex. R. App. P. 25.2(a)(2), apx. D; *Hargesheimer v. State*, 182 S.W.3d 906, 911 (Tex. Crim. App. 2006). The trial court's certification includes a nonstandard category providing that this "is not a plea-bargain case, and the defendant has the right of appeal as to punishment only." The box by that category is checked. The charge bargain recited above, however, is in fact a

evidence, the trial court found Appellant guilty and sentenced her to twelve years' confinement.

## Discussion

Appellant's court-appointed appellate counsel has filed a motion to withdraw as counsel and a brief in support of that motion. In the brief, counsel avers that, in her professional opinion, the appeal is frivolous. Counsel's brief and motion meet the requirements of *Anders v. California*, 386 U.S. 738, 744–45, 87 S. Ct. 1396, 1400 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds for relief. *See In re Schulman*, 252 S.W.3d 403, 406–12 (Tex. Crim. App. 2008) (orig. proceeding) (analyzing the effect of *Anders*); *Stafford v. State*, 813 S.W.2d 503, 510–11 & n.3 (Tex. Crim. App. 1991).

In compliance with *Kelly v. State*, counsel (1) notified Appellant of her motion to withdraw; (2) provided Appellant a copy of both the motion and brief;

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plea bargain affecting punishment in that it places a "cap" on Appellant's punishment. *See Shankle v. State*, 119 S.W.3d 808, 813 (Tex. Crim. App. 2003); *Opry v. State*, No. 02-16-00199-CR, 2017 WL 710645, at *2 (Tex. App.—Fort Worth Feb. 23, 2017, pet. ref'd) (mem. op., not designated for publication). Thus, appellate rule 25.2(a)(2) applies to allow Appellant to appeal only (1) matters raised by written motion filed and ruled on before trial or (2) after securing the trial court's permission to appeal. *See* Tex. R. App. P. 25.2(a)(2). Appellant, however, waived all pretrial motions. Because the trial court's nonstandard certification form allows Appellant to appeal all punishment issues, we treat that form as evidence of the trial court's permission to appeal. *See Opry*, 2017 WL 710645, at *2. We therefore hold that Appellant had the trial court's permission to appeal any punishment issue. *See id.*

(3) informed Appellant of her right to file a pro se response; (4) informed Appellant of her pro se right to seek discretionary review should this court hold the appeal frivolous; and (5) took concrete measures to facilitate Appellant's review of the appellate record. *See* 436 S.W.3d 313, 319 (Tex. Crim. App. 2014). Although this court gave Appellant the opportunity to exercise her rights to review the appellate record and to file a pro se response to the *Anders* brief, she did not file a response. The State likewise did not file a brief.

After an appellant's court-appointed counsel files a motion to withdraw on the ground that an appeal is frivolous and fulfills the requirements of *Anders,* this court is obligated to undertake an independent examination of the record to determine if there is any arguable ground that may be raised on her behalf. *See Stafford*, 813 S.W.2d at 511. 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 counsel's brief and the record. We agree with counsel that this appeal is wholly frivolous and without merit; we find nothing in the record that arguably might support this 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).

**Conclusion**

Accordingly, we grant counsel's motion to withdraw and affirm the trial court's judgment.

PER CURIAM

PANEL: PITTMAN, SUDDERTH, and KERR, JJ.

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

DELIVERED: June 29, 2017