NO. 07-03-0270-CR

IN THE COURT OF APPEALS

FOR THE SEVENTH DISTRICT OF TEXAS

AT AMARILLO

PANEL A

DECEMBER 22, 2004

SHELLY JO HORACEK, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM THE 84TH DISTRICT COURT OF OCHILTREE COUNTY;

NO. 3553; HONORABLE WILLIAM D. SMITH, JUDGE

Before JOHNSON, C.J., and REAVIS and CAMPBELL, JJ.

MEMORANDUM OPINION

Appellant Shelly Jo Horacek appeals from a judgment revoking her community supervision and imposing sentence pursuant to conviction for possession of a controlled substance (methamphetamine) in an amount of four or more grams but less than 200 grams. We affirm.

In accordance with a plea bargain, appellant entered a plea of guilty to a charge of possession of a controlled substance. Appellant was found guilty and sentenced to confinement for 10 years and assessed a fine of $2,000. The confinement portion of the sentence was suspended. Appellant was ordered to attend the Substance Abuse Felony Punishment Facility and was placed on community supervision for ten years.

The State filed a motion to revoke appellant's community supervision. At the hearing on the motion, appellant initially pled "true" to certain of the alleged violations; but then, with the permission of the trial court, withdrew her plea and entered a plea of "not true." Following withdrawal of appellant's "true" plea, her retained counsel informed the court that appellant had discharged him and asked the court's permission to withdraw from representing appellant. The court denied counsel's request and the hearing continued with counsel representing appellant.

The trial court found that appellant had violated various terms of her probation, revoked her community supervision, and ordered that she serve the 10-year confinement portion of her sentence. A motion for new trial was filed. Newly-appointed counsel represented appellant at the evidentiary hearing on her motion for new trial. The motion was overruled.

Appointed appellate counsel has filed a Motion to Withdraw and a Brief in Support thereof. In support of the motion to withdraw, counsel has certified that, in compliance with Anders v. California, 386 U.S. 738, 744-745, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), the record has been diligently reviewed. In so certifying, counsel has identified five possible

issues for appellate review and discussed why, under the controlling authorities, there is no reversible error in the trial court proceedings or judgment. See High v. State, 573 S.W.2d 807, 813 (Tex.Crim.App. 1978). Counsel has expressed his opinion that the record reflects no grounds upon which a non-frivolous appeal can arguably be predicated.

Counsel has attached exhibits showing that a copy of the Anders brief and Motion to Withdraw have been forwarded to appellant, and that counsel has appropriately advised appellant of appellant's right to review the record and file a *pro se* response to counsel's motion and brief. Appellant has filed a response.

We have made an independent examination of the record to determine whether there are any arguable grounds for appeal. See Penson v. Ohio, 488 U.S. 75, 80, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988); Stafford v. State, 813 S.W.2d 503, 511 (Tex.Crim.App. 1991). We have found no arguable grounds for appeal. We agree that the appeal is frivolous.

Accordingly, counsel's Motion to Withdraw is granted. The judgment of the trial court is affirmed.

Phil Johnson
Chief Justice

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