NO. 07-03-0467-CR

IN THE COURT OF APPEALS

FOR THE SEVENTH DISTRICT OF TEXAS

AT AMARILLO

PANEL B

FEBRUARY 7, 2005

DONALD RAY COIL, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM THE 242ND DISTRICT COURT OF HALE COUNTY;

NO. B14937–0305; HONORABLE ED SELF, JUDGE

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

MEMORANDUM OPINION

Donald Ray Coil brings this appeal from his conviction for the felony offense of driving while intoxicated. Agreeing with appellant's appointed counsel that the record shows no meritorious grounds for appeal, we will affirm.

Appellant was charged by an indictment alleging he operated a motor vehicle in a public place while he was intoxicated. The indictment contained three enhancement

paragraphs alleging two prior convictions for driving while intoxicated and one conviction for the felony offense of burglary. Appellant pled not guilty and was tried before a jury which found him guilty. He pled true to the enhancement paragraphs and punishment was assessed in conformity with the jury's verdict at fifteen years confinement in the Institutional Division of the Texas Department of Criminal Justice. Appellant's appointed trial counsel timely perfected appeal and new counsel was appointed to represent appellant on appeal.

Appellant's counsel has filed a motion to withdraw and a brief in support pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), in which he represents he has searched the record and in his professional opinion, under the controlling authorities and facts of this case, there is no reversible error or legitimate grounds for appeal. Counsel has informed appellant by letter of his right to review the trial record and to file a pro se brief. *Johnson v. State*, 885 S.W.2d 641, 645 (Tex.App.–Waco 1994, pet. ref'd). By letter this court also notified appellant of his opportunity to submit a response to the *Anders* brief and motion to withdraw filed by his counsel. Appellant has not filed a brief or other response. Nor has the State filed a brief in this appeal.

In conformity with the standards set out by the United States Supreme Court, we will not rule on the motion to withdraw until we have independently examined the record. *Nichols v. State*, 954 S.W.2d 83, 86 (Tex.App.–San Antonio 1997, no pet.). If this court determines the appeal has merit, we will remand it to the trial court for appointment of new counsel. *See Stafford v. State*, 813 S.W.2d 503, 511 (Tex.Crim.App. 1991).

The evidence at trial showed City of Plainview police officer Manuel Balderas observed appellant make a left turn at a controlled intersection without yielding to oncoming traffic. The other vehicle had to take evasive action to avoid a collision. Intending to make a traffic stop, Balderas turned on his overhead lights and stopped behind appellant at a gas station. He testified appellant had slurred speech, poor balance and poor performance on field sobriety tests. Balderas determined appellant was impaired and arrested him for driving while intoxicated. The State introduced a video recording made of the events occurring after Balderas stopped behind appellant's vehicle. Two other officers at the scene also opined appellant was intoxicated.

Balderas testified appellant subsequently refused to perform a breath test for intoxication insisting on a blood test. The officer allowed appellant to contact his stepfather who unsuccessfully attempted to have medical personnel go to the jail to perform a blood test. Appellant did not testify at the guilt or innocence phase of trial. The jury found appellant guilty.

Appellant was the only witness to testify at the punishment phase of trial. He admitted having a problem with alcohol. He asked that sentence be set "somewhere in the range of two to five [years incarceration]." On cross-examination he disputed the traffic violation alleged by the State. He admitted to five or six arrests for alcohol related offenses and four prior convictions.

Our review of counsel's brief and the record convinces us that appellate counsel conducted a thorough review of the record. We have also made an independent

examination of the entire record to determine whether there are any arguable grounds which might support the appeal. *See Stafford*, 813 S.W.2d at 511. We agree it presents no meritorious grounds for review. We affirm the judgment of the trial court and grant counsel's motion to withdraw.

James T. Campbell
Justice

Do not publish.