

NO. 07-09-0237-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL C
SEPTEMBER 8, 2010

ROY DEAN GATES, APPELLANT

v.

THE STATE OF TEXAS, APPELLEE

FROM THE 299TH DISTRICT COURT OF TRAVIS COUNTY;
NO. D-1DC-08-301065; HONORABLE CHARLES F. BAIRD, JUDGE

Before CAMPBELL and HANCOCK and PIRTLE, JJ.

MEMORANDUM OPINION

Appellant, Roy Dean Gates, was convicted by a jury of aggravated assault using a deadly weapon in a manner capable of causing death or serious bodily injury to a member of his household or a person with whom he had a dating relationship.¹ He was

¹Tex. Penal Code Ann. § 22.02(a)(1),(2) (Vernon Supp. 2009).

sentenced to twenty-two years confinement.² In presenting his appeal, counsel has filed an *Anders*³ brief in support of a motion to withdraw. We grant counsel's motion and affirm.

In support of his motion to withdraw, counsel certifies he has conducted a conscientious examination of the record and, in his opinion, the record reflects no potentially plausible basis to support an appeal. *Anders v. California*, 386 U.S. 738, 744-45, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); *In re Schulman*, 252 S.W.3d 403, 406 (Tex.Crim.App. 2008). Counsel candidly discusses why, under the controlling authorities, the appeal is frivolous. See *High v. State*, 573 S.W.2d 807, 813 (Tex.Crim.App. 1978). Counsel has also demonstrated that he has complied with the requirements of *Anders* and *In re Schulman* by (1) providing a copy of the brief to Appellant, (2) notifying him of his right to file a *pro se* response if he desired to do so, and (3) informing him of his right to file a *pro se* petition for discretionary review. *In re Schulman*, 252 S.W.3d at 408.⁴ The State filed its response to Appellant's brief indicating its agreement that there is no meritorious ground of error and the appeal is frivolous. And, by letter, this Court granted Appellant an extension of nearly six weeks

²As indicted the offense was punishable as a first degree felony. Tex. Penal Code Ann. § 22.02(b)(1) (Vernon Supp. 2009).

³*Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

⁴Notwithstanding that Appellant was informed of his right to file a *pro se* petition for discretionary review upon execution of the *Trial Court's Certification of Defendant's Right of Appeal*, counsel must comply with Rule 48.4 of the Texas Rules of Appellate Procedure which provides that counsel shall within five days after this opinion is handed down, send Appellant a copy of the opinion and judgment together with notification of his right to file a *pro se* petition for discretionary review. Tex. R. App. P. 48.4. See *In re Schulman*, 252 S.W.2d at 408 n.22 & 411 n.35.

to exercise his right to file a response to counsel's brief should he be so inclined. *Id.* at 409 n.23. Appellant did not file a response.

We have reviewed counsel's arguments and we have independently examined the entire record to determine whether there are any non-frivolous issues which might support the appeal. See *Penson v. Ohio*, 488 U.S. 75, 80, 109 S.Ct. 346, 102 S.Ct. 346, 102 L.Ed.2d 300 (1988); *In re Schulman*, 252 S.W.3d at 409; *Stafford v. State*, 813 S.W.2d 503, 511 (Tex.Crim.App. 1991). We have found no such issues. See *Gainous v. State*, 436 S.W.2d 137, 138 (Tex.Crim.App. 1969). After reviewing the record and counsel's brief, we agree with counsel that there are no plausible grounds for appeal. See *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex.Crim.App. 2005).

Accordingly, counsel's motion to withdraw is granted and the trial court's judgment is affirmed.

Patrick A. Pirtle
Justice

Do not publish.