



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-15-00193-CR

TYE NATHAN TICER, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

**On Appeal from the 100th District Court
Childress County, Texas
Trial Court No. 5596; Honorable Stuart Messer, Presiding**

February 23, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

On January 21, 2014, pursuant to a plea bargain, Appellant, Tye Nathan Ticer, pleaded guilty to possession of a controlled substance, namely, methamphetamine, in an amount of less than one gram,¹ enhanced by two prior felony convictions,² and was

¹ See TEX. HEALTH & SAFETY CODE ANN. § 481.115(a) (West 2010). The offense was punishable as a state jail felony under section 12.35(a) of the Texas Penal Code. See TEX. PENAL CODE ANN. § 12.35(a) (West Supp. 2015); TEX. HEALTH & SAFETY CODE ANN. § 481.115(b) (West 2010).

² Appellant entered into a stipulation of evidence that he had previously been convicted of the felony offense of possession of a controlled substance on December 4, 2003, in Childress County Cause

placed on deferred adjudication community supervision for six years and fined \$1,000. In October 9, 2014, the State moved to proceed to adjudication alleging Appellant had violated Condition 2 by consuming methamphetamine while on community supervision, Condition 7 by failing to report as ordered, Condition 8 by failing to pay his supervision fee as ordered, Condition 9 by failing to pay his court-ordered fees as ordered, and Condition 10 by failing to complete 75 hours of community service. On April 9, 2015, a hearing was held on the State's motion. Appellant pleaded "not true" to the State's allegations contending he lacked the financial ability to make his court-ordered payments. The trial court heard evidence, revoked Appellant's community supervision, and assessed punishment at twenty years confinement, a \$1,000 fine, and \$140 in restitution. In presenting this appeal, counsel has filed an *Anders*³ brief in support of a motion to withdraw. We affirm and grant counsel's motion.

In support of his motion to withdraw, counsel certifies he has conducted a conscientious examination of the record, and in his opinion, it reflects no potentially plausible basis for reversal of Appellant's conviction. *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 record supports that conclusion. *See High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. 1978). Counsel has demonstrated he has complied with the requirements of *Anders* and *In re Schulman* by (1) providing a copy of the brief to

Number 4630 and that, after the conviction in Cause Number 4630 became final, he was convicted of the felony offense of engaging in organized criminal activity in the 100th District Court of Childress County, Texas, in Cause Number 5001 on the 10th day of November 2008. As enhanced, the offense was punishable as a second degree felony. *See* TEX. PENAL CODE ANN. § 12.425(b) (West Supp 2015).

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

Appellant, (2) notifying him of his right to review the records and file a *pro se* response if he desired to do so.⁴ *In re Schulman*, 252 S.W.3d at 408. By letter, this court also advised Appellant of his right to file a response to counsel's brief. Appellant did file a response, which we have reviewed. The State did not favor us with a brief. By the *Anders* brief, counsel evaluates the underlying proceedings and finds no issues to present as potential reversible error. We agree with counsel.

STANDARD OF REVIEW

An appeal from a court's order adjudicating guilt is reviewed in the same manner as a revocation hearing. See TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (West Supp. 2015). When reviewing an order revoking community supervision imposed under an order of deferred adjudication, the sole question before this court is whether the trial court abused its discretion. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006); *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984); *Jackson v. State*, 645 S.W.2d 303, 305 (Tex. Crim. App. 1983). In a revocation proceeding, the State must prove by a preponderance of the evidence that the probationer violated a condition of community supervision as alleged in the motion to revoke. *Cobb v. State*, 851 S.W.2d 871, 874 (Tex. Crim. App. 1993). When more than one violation of the conditions of community supervision is alleged, a single violation is adequate and the revocation order shall be affirmed if at least one sufficient ground supports the court's order. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980); *Jones v. State*, 571 S.W.2d 919, 193 (Tex. Crim. App. 1978). The trial court abuses its discretion in revoking community supervision if, as to every ground alleged, the State fails to meet its

⁴ See *Kelly v. State*, 436 S.W.3d 313 (Tex. Crim. App. 2014) (regarding Appellant's right of access to the record for purposes of filing a *pro se* response).

burden of proof. *Cardona*, 665 S.W.2d at 494. In determining the sufficiency of the evidence to sustain a revocation, we view the evidence in the light most favorable to the trial court's ruling. *Jones v. State*, 589 S.W.2d 419, 421 (Tex. Crim. App. 1979).

ANALYSIS

Here, Appellant entered a plea of not true to all allegations in the State's original petition for revocation. The State then produced testimony from Appellant's community supervision officer that while on community supervision Appellant tested positive for the consumption of methamphetamine, failed to report as directed, and failed to pay his supervision fee and court-ordered fees as ordered. After Appellant offered evidence supporting his contention that he had complied with the conditions of community supervision to the best of his ability, the court found that he had violated Condition Numbers 2, 7, 8, and 9. Having found at least one violation of the conditions of community supervision, based upon the record before us, we cannot say the trial court abused its discretion in revoking Appellant's order of deferred adjudication.

When we have an *Anders* brief by counsel and a *pro se* response by an appellant, we have two choices. We may determine that the appeal is wholly frivolous and issue an opinion explaining that we have reviewed the record and find no reversible error; *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005) (citing *Anders*, 386 U.S. at 744), or we may determine that arguable grounds for appeal exist and remand the cause to the trial court so that new counsel may be appointed to brief issues. *Id.* (citing *Stafford v. State*, 813 S.W.2d 503, 510 (Tex. Crim. App. 1991)).

We have independently examined the entire record to determine whether there are any non-frivolous issues that were preserved in the trial court which might support

the appeal. See *Penson v. Ohio*, 488 U.S. 75, 80, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); *In re Schulman*, 252 S.W.3d at 409; *Stafford*, 813 S.W.2d at 511. We have found no such issues. See *Gainous v. State*, 436 S.W.2d 137, 138 (Tex. Crim. App. 1969). After reviewing the record, counsel's brief, and the *pro se* response, we agree with counsel that there is no plausible basis for reversal of Appellant's conviction. See *Bledsoe*, 178 S.W.3d at 826-27.

CONCLUSION

We therefore affirm the trial court's judgment and grant counsel's motion to withdraw.⁵ TEX. R. APP. P. 43.2(a).

Patrick A. Pirtle
Justice

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⁵ Counsel shall, within five days after this opinion is handed down, comply with Rule 48.4 of the Texas Rules of Appellate Procedure by sending Appellant a copy of the opinion and judgment together with notification of his right to file a *pro se* petition for discretionary review. *In re Schulman*, 252 S.W.3d at 408 n.22 & 411 n.35. The duty to send the client a copy of this court's decision is ministerial in nature, does not involve legal advice, and exists after the court of appeals has granted counsel's motion to withdraw. *Id.* at 411 n.33.