In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00367-CR

CAROLE ELAINE SANSOM, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 66th District Court
Hill County, Texas
Trial Court No. 38,487; Honorable Lee Harris, Presiding

January 22, 2016

MEMORANDUM OPINION

Before CAMPBELL and HANCOCK and PIRTLE, JJ.

Pursuant to a plea bargain, in October 2014, Appellant, Carole Elaine Sansom, was convicted of driving while intoxicated, third or more,[1] enhanced. She was sentenced to eight years confinement and a $2,000 fine. The eight-year sentence was suspended in favor of community supervision for a term of five years. A condition of

[1] TEX. PENAL CODE ANN. § 49.04(a) (West Supp. 2015). The offense is a third degree felony if it is shown that Appellant had two prior convictions relating to the operation of a motor vehicle while intoxicated. *Id.* at 49.09(b)(2).

Appellant's community supervision was that she serve ten days in the county jail.[2] Less than a year later, in August 2015, the State moved to revoke Appellant's community supervision alleging seven violations of the conditions thereof. At a hearing on the State's motion, Appellant entered pleas of true to six of the seven allegations. After hearing testimony, the trial court found six allegations to be true, revoked Appellant's community supervision, and imposed a sentence of seven and one-half years confinement and a fine of $1,880. 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 her motion to withdraw, counsel certifies she has conducted a conscientious examination of the record, and in her opinion, the record 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 she has complied with the requirements of *Anders* and *In re Schulman* by (1) providing a copy of the brief to Appellant, (2) notifying her of her right to review the record and file a *pro se* response if she desired to do so,[4] and (3) informing her of her right to file a *pro se* petition for

[2] At the revocation hearing, the trial judge scolded Appellant for failing to serve her ten days until she was arrested on the motion to revoke in July 2015, some eight months after being placed on community supervision.

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

[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).

discretionary review. *In re Schulman*, 252 S.W.3d at 408.[5] By letter, this court granted Appellant an opportunity to exercise her right to file a response to counsel's brief. Appellant did file a response complaining that her community supervision officer did not appear at her revocation hearing. The State did not favor us with a brief.

By the *Anders* brief, counsel evaluates the underlying proceedings and concludes no error is evident in the record and therefore, there are no meritorious issues to present on appeal. After finding six of the seven allegations in the State's motion to be true, the trial court conducted the punishment phase of the hearing. Appellant was the only witness to testify. She testified she was unable to make payments for fines and fees because her disability checks had been reduced to pay child support. She also testified that her failure to report was due to transportation issues. During cross-examination, Appellant testified she was on her way home from a bar when she was arrested on her third DWI offense. She confirmed she had not taken a DWI Repeat Offender class—a condition of community supervision. She acknowledged having three prior theft convictions and missing three reporting dates.

STANDARD OF REVIEW

When reviewing an order revoking community supervision, the sole question before this Court is whether the trial court abused its discretion. *Rickels v. State,* 202

[5] Notwithstanding that Appellant was informed of her 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 her 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.

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 191, 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 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). Additionally, a plea of true standing alone is sufficient to support a trial court's revocation order. *Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. 1979).

ANALYSIS

When, as here, 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)).

In this case, 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 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, counsel's brief, and the *pro se* response, we agree with counsel that there is no plausible basis for reversal. *See Bledsoe*, 178 S.W.3d at 826-27.

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

Patrick A. Pirtle
Justice

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