



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

No. 07-15-00385-CR

ERIC WAYNE ELLIS, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 64th District Court
Hale County, Texas
Trial Court No. A18924-1109, Honorable Robert W. Kinkaid, Jr., Presiding

May 10, 2016

MEMORANDUM OPINION

Before **CAMPBELL** and **HANCOCK** and **PIRTLE, JJ.**

Appellant, Eric Wayne Ellis, entered a plea of guilty, pursuant to a plea bargain agreement, to a State Jail Felony indictment alleging theft of property of the value of \$1,500 or more but less than \$20,000.¹ In accordance with the plea bargain, the trial

¹ See TEX. PENAL CODE ANN. § 31.03(a), (e)(4)(A) (West 2011). The 84th Texas Legislature amended Section 31.03(e), effective as of September 1, 2015. See Act of May 31, 2015, 84th Leg., R.S., ch. 1251, § 10, 2015 Tex. Gen. Laws 4209, 4213 (current version at TEX. PENAL CODE ANN. § 31.03(e) (West Supp. 2015)). The amended version of this section criminalizes theft of property valued at \$2,500 or more but less than \$30,000. Because appellant was placed on deferred adjudication on June 1, 2012, we cite, in this instance, to the prior version of the statute under which appellant was adjudicated.

court found the evidence sufficient to prove appellant's guilt but deferred finding appellant guilty and placed him on community supervision for four years with standard terms and conditions of probation. The State filed three motions to adjudicate appellant guilty. As a result of the first motion to adjudicate, appellant's terms and conditions of probation were modified. The second and third motions to adjudicate were dismissed without prejudice by the State. The final motion to adjudicate was filed on August 5, 2015, and heard by the trial court on October 1, 2015. Appellant pleaded true to the allegations in the motion to adjudicate and the trial court adjudicated him guilty of the original charge. After hearing the punishment evidence, the trial court sentenced appellant to serve eighteen months in a State Jail Facility and fined appellant \$3,000 plus costs of court. Appellant has perfected his appeal and we will affirm.

Appellant's attorney has filed an *Anders* brief and a motion to withdraw. *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 498 (1967). In support of her motion to withdraw, counsel certifies that she has diligently reviewed the record and, in her opinion, the record reflects no reversible error upon which an appeal can be predicated. *Id.* at 744-45. In compliance with *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. 1978), counsel has candidly discussed why, under the controlling authorities, there is no error in the trial court's judgment. Additionally, counsel has certified that she has provided appellant a copy of the *Anders* brief and motion to withdraw and appropriately advised appellant of his right to file a *pro se* response in this matter. *Stafford v. State*, 813 S.W.2d 503, 510 (Tex. Crim. App. 1991). The Court has also advised appellant of his right to file a *pro se* response. Additionally, appellant's counsel has certified that she has provided appellant with a motion to acquire a copy of the

record to use in preparation of a *pro se* response. See *Kelly v. State*, 436 S.W.3d 313, 319-20 (Tex. Crim. App. 2014). Appellant has filed no response.

By his *Anders* brief, counsel raises grounds that could possibly support an appeal, but concludes the appeal is frivolous. We have reviewed these grounds and made an independent review of the entire record to determine whether there are any arguable grounds which might support an appeal. See *Penon v. Ohio*, 488 U.S. 75, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); *Bledsoe v. State*, 178 S.W.3d 824 (Tex. Crim. App. 2005). We have found no such arguable grounds and agree with counsel that the appeal is frivolous.²

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

Mackey K. Hancock
Justice

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² Counsel shall, within five days after this opinion is handed down, send his client a copy of the opinion and judgment, along with notification of appellant's right to file a *pro se* petition for discretionary review. See TEX. R. APP. P. 48.4.