In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00078-CR

JOSE LUIS TOVAR, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 100th District Court
Carson County, Texas
Trial Court No. 4581, Honorable Stuart Messer, Presiding

December 20, 2016

MEMORANDUM OPINION

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

On September 14, 2010, appellant, Jose Luis Tovar, pleaded guilty, pursuant to a plea bargain, to the offense of possession of a controlled substance in an amount of 200 grams or more but less than 400 grams.[1] In accordance with the terms of the plea bargain, the trial court deferred adjudication of guilt and placed appellant on community supervision for a period of ten years. Thereafter, on January 31, 2013, the State filed a motion to proceed with adjudication alleging that appellant had violated certain terms

[1] *See* TEX. HEALTH & SAFETY CODE ANN. § 481.11(e) (West 2010).

and conditions of his community supervision. Specifically, the State alleged that appellant had (1) failed to report by mail as directed for certain specified months, (2) failed to pay his monthly community supervision fee for certain specified months, and (3) failed to pay his court ordered fees and fines for certain specified months.

On February 5, 2016, the trial court held a hearing on the State's motion to adjudicate appellant. Prior to hearing evidence regarding whether to proceed with adjudication of appellant, the trial court heard evidence regarding the competency of appellant to proceed to trial. After hearing the testimony of the expert appointed to examine appellant, the trial court found appellant competent to stand trial on the State's motion to proceed with adjudication.

The trial court then heard the evidence regarding the violations of the terms and conditions of community supervision alleged in the State's motion. After hearing the evidence, the trial court adjudicated appellant guilty of possession of a controlled substance as originally alleged. After considering the evidence regarding punishment, the trial court sentenced appellant to serve twenty years in the Institutional Division of the Texas Department of Criminal Justice. 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 his motion to withdraw, counsel certifies that he has diligently reviewed the record and, in his 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. [Panel Op.] 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 he 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) (en banc). The Court has also advised appellant of his right to file a *pro se* response. Additionally, appellant's counsel has certified that he 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 a 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 Penson v. Ohio*, 488 U.S. 75, 82–83, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). We have found no such arguable grounds and agree with counsel that the appeal is frivolous.[2]

Appellant's response consists of a letter to the Court wherein appellant contends that the reason he was not able to pay the amounts required by the terms and conditions of his community supervision order was because of an accidental injury he suffered at work. However, the record reflects that the injury suffered by appellant

[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.

occurred on November 5, 2012, and that, before the injury, appellant had made one partial payment of his supervision fees or court ordered fees and fine. For a period of two years, appellant did not pay the fees or fines he was ordered to pay. Further, the injury had no bearing on appellant's failure to report in writing as was required by the order placing him on community supervision. Remembering that proof of violation of a single term and condition of community supervision will support an order adjudicating appellant guilty of the underlying offense, we find appellant's response does not raise an arguable ground for appeal. *See Antwine v. State,* 268 S.W.3d 634, 636 (Tex. App.—Eastland 2008, pet. ref'd).

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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