In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00240-CR

SANDRA MARIE WILSON, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 163rd District Court
Orange County, Texas
Trial Court No. B140107-R, Honorable Dennis Powell, Presiding

February 24, 2017

MEMORANDUM OPINION

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

Appellant Sandra Marie Wilson appeals the trial court's judgment revoking her community supervision and sentencing her to two years' confinement in a state jail. Her court-appointed appellate counsel filed a motion to withdraw from the representation supported by an *Anders*[1] brief. We will grant counsel's motion to withdraw, modify the judgment, and affirm the judgment as modified.

[1] *Anders v. California,* 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967); *see In re Schulman,* 252 S.W.3d 403 (Tex. Crim. App. 2008).

Background

In April 2014, appellant plead guilty to theft, less than $1,500 value, enhanced to a state jail felony by two prior theft convictions.[2] The trial court ordered a presentence investigation report. In May 2014, it sentenced appellant to two years' confinement in a state jail but suspended confinement in favor of a four-year term of community supervision.

In January 2016, the State moved to revoke appellant's community supervision, alleging seven grounds. The motion was heard in three settings. Appellant plead true to three grounds and not true to the remaining grounds. One revocation ground alleged appellant traveled to Louisiana without first obtaining the permission of her community supervision officer. At an earlier compliance hearing appellant initially denied traveling to Louisiana but later in the hearing admitted having done so. After receiving evidence, the trial court found appellant violated each of the conditions of community supervision the State alleged, revoked appellant's community supervision, and sentenced her as noted. A finding of one revocation ground is sufficient to revoke community supervision. *See, e.g., Smith v. State,* 286 S.W.3d 333, 342 (Tex. Crim. App. 2009) ("We have long held that one sufficient ground for revocation would support the trial court's order revoking community supervision" (internal quotation marks omitted)). This appeal

[2] *See* TEX. PENAL CODE ANN. § 31.03(a),(e)(4)(D) (defining offense and enhancement to state jail felony). Under the current version of sub-section (e)(4)(D), theft of property valued at less than $2,500 is a state jail felony if the defendant has been previously convicted two or more times of any grade of theft. When appellant was indicted in February 2014, subsection (e)(4)(D) fixed the value of the property stolen at $1,500. The Legislature increased the value to $2,500 effective September 1, 2015. *See* Act of May 31, 2015, 84th Leg., R.S., ch. 1251, §§ 10, 31, 2015 Tex. Gen. Laws 4209, 4213, 4222 (current version at TEX. PENAL CODE ANN. § 31.03(e)(4)(D) (West Supp. 2016)).

followed. By order of the Supreme Court of Texas, the case was transferred to this Court from the Ninth District Court of Appeals, at Beaumont.[3]

In her *Anders* brief, counsel certified "the appeal is without merit and is frivolous because the record reflects no reversible error, and there are no grounds upon which an appeal may be based." The brief cited applicable case law and discussed the case background and appellant's revocation hearing, and analyzed the record. Counsel found no error.

Counsel notified appellant by letter of her motion to withdraw, provided appellant a copy of the motion and *Anders* brief, informed her of her right to file a pro se response, informed her of her right to seek discretionary review before the Texas Court of Criminal Appeals should this Court find the appeal frivolous, and provided appellant a copy of the reporter's record and clerk's record. *See Kelly v. State,* 436 S.W.3d 313, 319-20 (Tex. Crim. App. 2014) (specifying appointed counsel's obligations on filing a motion to withdraw supported by an *Anders* brief). By letter, this Court also informed appellant of her right to file a pro se response to counsel's *Anders* brief and appellant filed a pro se response which we have considered.

In conformity with the standards set by the United States Supreme Court, we do not rule on a motion to withdraw before independently examining the record. *Nichols v. State,* 954 S.W.2d 83, 86 (Tex. App.—San Antonio 1997, no pet.). If we determine the appeal has arguable merit, we remand it to the trial court for appointment of new counsel. *Stafford v. State,* 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). We have

[3] TEX. GOV'T CODE ANN. § 73.001 (West 2013).

reviewed the entire record in this case to determine whether there is any arguable ground which might support an appeal. *Penson 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). Finding no arguable ground supporting a claim of reversible error, we agree with counsel that the appeal is frivolous.

However, our review of the record revealed an error in the written judgment capable of correction without trial court involvement. Specifically, we observed that the written judgment of June 1, 2016, requires appellant to pay court costs of $1,583. From the record, it is apparent that this total consists of $450 (attorney's fees for representation in the 2014 initial plea proceedings); $775 (attorney's fees for representation in the 2016 plea and revocation proceedings); and $358 (court costs apart from attorney's fees).

Three times the trial court found appellant indigent: prior to placing her on community supervision, prior to revoking her community supervision, and for appeal. The record contains no evidence showing appellant's status as an indigent changed. Absent a change in a defendant's status as an indigent, a trial court is not authorized to require the defendant to repay attorney's fees. *See* TEX. CODE CRIM. PROC. ANN. arts. 26.04(p), 26.05(g) (West Supp. 2016); *Wiley v. State,* 410 S.W.3d 313, 317 (Tex. Crim. App. 2013); *Freeman v. State,* No. 09-15-00215-CR, 2016 Tex. App. LEXIS 12265, at *2-3 (Tex. App.—Beaumont Nov. 16, 2016, no pet.) (mem. op., not designated for publication); *Roberts v. State,* 327 S.W.3d 880, 884 (Tex. App.—Beaumont 2010, no pet.). A condition of appellant's 2014 order of community supervision was repayment of

court-appointed attorney's fees of $450. She did not appeal that order and it may not now be challenged on appeal. *Wiley,* 410 S.W.3d at 319.

Following a procedure used by the Ninth Court of Appeals, we asked the parties by letter if they agreed to our modification of the judgment by fixing court costs at $808. *See Freeman,* 2016 Tex. App. LEXIS 12265, at *2-3 (after *Anders* brief filed, court inquired by letter of parties concerning agreed modification of judgment to delete attorney's fees imposed on indigent defendant). Appellant did not object and the State made no response. We therefore modify the June 1, 2016 written judgment as follows: At page one, beneath the heading "Court Costs," the sum of $1,583 is deleted and in its place is inserted the amount of $808.

We grant counsel's motion to withdraw,[4] modify the judgment of the trial court as stated, and affirm the judgment as modified.

James T. Campbell
Justice

Do not publish.

[4] Counsel shall, within five days after the opinion is handed down, send her client a copy of the opinion and judgment, along with notification of the defendant's right to file a pro se petition for discretionary review with the Court of Criminal Appeals. TEX. R. APP. P. 48.4.