



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

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No. 07-17-00220-CR

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**PRESTON SCOTT RUSSELL, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the 29th District Court  
Palo Pinto County, Texas  
Trial Court No. 16086; Honorable Michael Moore, Presiding

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December 1, 2017

**MEMORANDUM OPINION**

**Before QUINN, C.J., and PIRTLE and PARKER, JJ.**

Following an open plea of guilty to the bench, Appellant, Preston Scott Russell, was sentenced to confinement for fifteen years and assessed a fine of \$2,500 for possession of a controlled substance, namely methamphetamine, of one gram or more but less than four grams.<sup>1</sup> Punishment was enhanced by a prior felony conviction which

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<sup>1</sup> See TEX. HEALTH & SAFETY CODE ANN. §§ 481.102(6), 481.115(a), (c) (West 2017) (a third degree felony). Appellant plead true to a prior felony conviction, and for purposes of his punishment here, his offense was enhanced to a second degree felony. See TEX. PENAL CODE ANN. § 12.42(a) (West Supp. 2017).

elevated the punishment range to that of a second degree felony.<sup>2</sup> In presenting this appeal, counsel has filed an *Anders*<sup>3</sup> brief in support of a motion to withdraw.<sup>4</sup> We affirm and grant counsel's motion to withdraw.

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 that he has complied with the requirements of *Anders* and *In re Schulman* by (1) providing a copy of the brief to Appellant, (2) notifying him of the right to file a *pro se* response if he desired to do so, and (3) informing him of the right to file a *pro se* petition for discretionary review. *In re Schulman*, 252 S.W.3d at 408.<sup>5</sup> By letter, this court granted Appellant an opportunity to

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<sup>2</sup> TEX. PENAL CODE ANN. § 12.42(a) (West Supp. 2017).

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

<sup>4</sup> Originally appealed to the Eleventh Court of Appeals, this appeal was transferred to this court by the Texas Supreme Court pursuant to its docket equalization efforts. TEX. GOV'T CODE ANN. § 73.001 (West 2013). Should a conflict exist between the precedent of the Eleventh Court of Appeals and this court on any relevant issue, this appeal will be decided in accordance with the precedent of the transferor court. TEX. R. APP. P. 41.3.

<sup>5</sup> Notwithstanding that Appellant was informed of his 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 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 an informational one, not a representational one. It 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.

exercise his right to file a response to counsel's brief, should he be so inclined. *Id.* at 409 n.23. Appellant did not file a response. Neither did the State favor us with a brief.

By the *Anders* brief, counsel evaluates possible arguments on appeal including the trial court's evidentiary rulings, the sufficiency of the evidence, the effectiveness of trial counsel's representation, the voluntariness of Appellant's plea, and the legality of the sentence imposed. He concludes they would not result in reversible error and concedes there are no arguable issues to advance on appeal.

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 entire record as well as counsel's brief, we agree with counsel that there is no plausible basis for reversal of Appellant's conviction. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005).

#### CONCLUSION

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

Patrick A. Pirtle  
Justice

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