In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-17-00261-CR

KELLI DAWN TIDWELL, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 108th District Court
Potter County, Texas
Trial Court No. 52,503-E; Honorable Douglas R. Woodburn, Presiding

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February 27, 2018

MEMORANDUM OPINION

Before CAMPBELL, PIRTLE, and PARKER, JJ.

In 2006, pursuant to a guilty plea, Appellant, Kelli Dawn Tidwell, was placed on deferred adjudication for three years for possession of methamphetamine in an amount of less than one gram, a state jail felony.[1] A fine of $1,000 was assessed in the order deferring adjudication. By its amended motion to proceed, filed April 24, 2009, the State

[1] TEX. HEALTH & SAFETY CODE ANN. § 481.115(b) (West 2017).

alleged numerous violations of the conditions of Appellant's community supervision. More than eight years later, on July 6, 2017, at a hearing held on the State's amended motion, Appellant entered a plea of true to all of the alleged violations. After hearing testimony, the trial court adjudicated Appellant guilty of the original offense, sentenced her to twenty-four months in a state jail facility, and assessed a $1,000 fine. In presenting this appeal, counsel has filed an *Anders*[2] brief in support of a motion to withdraw. We reform the judgment, affirm as reformed, and grant counsel's motion to withdraw.

In support of her motion to withdraw, counsel certifies she has conducted a conscientious examination of the record, and in her 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 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 the right to file a *pro se* response if she desired to do so, and (3) informing her of the right to file a *pro se* petition for discretionary review. *In re Schulman*, 252 S.W.3d at 408.[3] By letter, this court granted Appellant an opportunity to

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

[3] 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 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 her right to file a response to counsel's brief, should she be so inclined. *Id.* at 409 n.23. Appellant did not file a response. Neither did the State favor us with a brief.

BACKGROUND

After being placed on deferred adjudication community supervision, Appellant reported to her supervision officer on June 9, 2006. She requested a travel permit to go to Dallas to see her son and never returned to Potter County. In 2007, a warrant was issued for Appellant for violating the conditions of community supervision. The Potter County Sheriff's Office sent personnel to Dallas County to bring her back. However, after finding out that she was being housed in a medical unit in Dallas County, Potter County refused to transport her. She was told of the refusal and was released from jail by Dallas County.

The community supervision officer conceded during cross-examination that after 2009, there was no due diligence by Potter County to locate Appellant and have her arrested. Appellant's only contact with the community supervision office was a phone call. In that call, she was asked to return to Potter County to report but her car broke down and she did not return.

Eventually, Appellant was arrested in 2017 on the March 2009 warrant. During her testimony, she admitted that in 2004, she became addicted to methamphetamines to cope with a sick child. She ceased using methamphetamines in 2011 when she became a grandmother and has remained clean. She has been married for decades, has a large family to care for, and works in Dallas for a non-profit organization. She requested to remain on community supervision. During cross-examination, Appellant conceded with

candor that she completely disregarded the conditions of her community supervision for ten years.

STANDARD OF REVIEW

An appeal from a court's order adjudicating guilt is reviewed in the same manner as a revocation hearing. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (West Supp. 2017). When reviewing an order revoking community supervision imposed under an order of deferred adjudication, the sole question before this court is whether the trial court abused its discretion. *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013) (citing *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006)). In a revocation proceeding, the State must prove by a preponderance of the evidence that the defendant 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). In a revocation context, "a preponderance of the evidence" means "that greater weight of the credible evidence which would create a reasonable belief that the defendant has violated a condition of his [community supervision]." *Hacker*, 389 S.W.3d at 865 (citing *Rickels*, 202 S.W.3d at 764). 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 v. State*, 665 S.W.2d 492, 494 (Tex. Crim. App. 1984). 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

By the *Anders* brief, counsel evaluates the record and determines that the trial court's judgment and sentence are supported by the evidence and that Appellant's sentence is within the statutory range. Additionally, the "due-diligence defense" found at article 42.12, section 24 of the Code of Criminal Procedure, providing a limited affirmative defense to a revocation of community supervision where the State fails to use due diligence in the execution and enforcement of a warrant issued following a motion to revoke community supervision, applies only to allegations of failure to report and failure to remain within a specified place. *Garcia v. State*, 387 S.W.3d 20, 23-24 (Tex. Crim. App. 2012). Here, the State alleged numerous other allegations, including failure to pay her fine, court costs, community supervision fees, Crime Stopper's fee, and Crime Victim's Compensation Fund restitution, to which the due-diligence statute does not apply. *Id.* Finally, Appellant's counsel agrees that her plea of true to the State's allegations is sufficient to support the trial court's judgment. On that basis, counsel concludes that the record presents no arguable basis for appeal.

We have also independently examined the 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 and 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).

REFORMATION OF JUDGMENT

This court has the power to modify the judgment of the court below to make the record speak the truth when we have the necessary information to do so. TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993). Appellate courts have the power to reform whatever the trial court could have corrected by a judgment *nunc pro tunc* where the evidence necessary to correct the judgment appears in the record. *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd).

The trial court's order placing Appellant on deferred adjudication community supervision included a $1,000 fine. At the conclusion of the hearing on the State's motion to revoke, the trial court orally pronounced the fine; however, the summary portion of the judgment was left blank under the heading Fine. Consequently, we reform the judgment to reflect in the summary portion of the judgment that Appellant owes a $1,000 fine, subject to credit for any portion of the fine that was paid while on community supervision.

CONCLUSION

Accordingly, the trial court's judgment is reformed to include in the judgment the $1,000 fine originally assessed and subsequently pronounced at the revocation hearing. As reformed, the judgment is affirmed and counsel's motion to withdraw is granted.

Patrick A. Pirtle
Justice

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