In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-19-00121-CR

FAJARICK WILLIAMS, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 244th District Court
Ector County, Texas
Trial Court No. C-40,637; Honorable James Rush, Presiding

August 21, 2019

MEMORANDUM OPINION

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

In June 2014, pursuant to a guilty plea, Appellant, Fajarick Williams, was placed on deferred adjudication community supervision for ten years for the offense of aggravated robbery,[1] with an affirmative finding on use of a deadly weapon, to wit: a firearm. In February 2019, the trial court amended Appellant's conditions of community supervision to include new conditions related to treatment for drug and alcohol abuse.

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[1] TEX. PENAL CODE ANN. § 29.03(a) (West 2019).

Just two months later, the State moved to adjudicate Appellant's guilt on the original offense for five violations of the conditions of community supervision. At the hearing on the State's motion, Appellant entered pleas of "true" to three of the five allegations (marihuana use) and pleas of "not true" to the remaining two allegations (possession of alcohol and possession of a firearm). After testimony was presented, the trial court found all five allegations to be true, adjudicated Appellant guilty, and sentenced him to twenty-three years confinement. The trial court also noted the finding of use of a deadly weapon. In presenting this appeal from the trial court's *Judgment Adjudicating Guilt*, counsel has filed an *Anders*[2] brief in support of a motion to withdraw.[3] 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

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

[3] 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 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.

(3) informing him of the right to file a *pro se* petition for discretionary review. *In re Schulman*, 252 S.W.3d at 408.[4] By letter, this court granted Appellant an opportunity to 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.

BACKGROUND

In 2012, Appellant was indicted for committing theft and intentionally and knowingly threatening or placing another in fear of imminent bodily injury or death by using or exhibiting a firearm during the robbery of a convenience store. On one occasion during Appellant's period of community supervision, his supervising officer made a field visit to the address provided to ensure it was his residence. While confirming that Appellant lived at the address, the officer observed a gun holster in the bedroom. Appellant told the officer the gun was in the living room in a Glock case. Appellant denied ownership of the gun but was advised by the officer that being in possession of the weapon was a violation of his community supervision.

During that same visit, the officer also observed a large bottle of vodka on top of the refrigerator, also a violation of Appellant's community supervision. Based, in part, on these alleged violations, the State moved to adjudicate him guilty of the original offense and a warrant was issued for his arrest.

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[4] 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.

At the hearing on the State's motion, the supervision officer testified that Appellant admitted using marihuana on several occasions, but he denied that the gun and vodka belonged to him. Another supervision officer testified that Appellant's drug tests were negative until April 2018, when he tested positive for marihuana.

Appellant's mother testified in his defense. She explained that she had a permit to carry a gun and the gun found in Appellant's house belonged to her. According to her, whenever she traveled by plane, she would leave the gun with her other son, Appellant's brother. He occasionally visited Appellant but did not live with him.

Appellant's mother testified that on one occasion when Appellant's brother was at Appellant's home, she went there before departing for the airport and handed the gun with its holster to Appellant's brother outside the home. She also testified that Appellant did not consume alcohol and she speculated that the vodka belonged to Appellant's brother. Notwithstanding the defense's theory, the trial court found all five violations of community supervision to be true.

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. 42A.108(b) (West 2018); *Harness v. State*, No. 11-14-00301-CR, 2016 Tex. App. LEXIS 8080, at *4 (Tex. App.—Eastland July 28, 2016, no pet.) (mem. op., not designated for publication). 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). 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 v. State*, 202 S.W.3d 759, 764 (Tex. Crim. App. 2006)). 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). The finding of a single violation of community supervision is sufficient to support revocation. *Dansby v. State,* 398 S.W.3d 233, 240 n.11 (Tex. Crim. App. 2013); *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012); *Johnson v. State,* No. 07-19-00031-CR, 2019 Tex. App. LEXIS 5632, at *4 (Tex. App.—Amarillo July 3, 2019, no pet. h.) (mem. op., not designated for publication). 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); *Reyes v. State,* No. 07-17-00404-CR, 2018 Tex. App. LEXIS 3451, at *6 (Tex. App.—Amarillo May 16, 2018, no pet.) (mem. op., not designated for publication).

ANALYSIS

By the *Anders* brief, counsel presents sufficiency of the evidence and ineffective assistance of counsel as potentially arguable issues for appeal. However, after analyzing the issues, counsel concedes there is sufficient credible evidence to support the trial

court's judgment and that there is nothing in the record to substantiate a claim of ineffective assistance of counsel.

We too have 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

When Appellant was first placed on deferred adjudication community supervision, the summary portion of the *Order of Deferred Adjudication* included an affirmative finding on use of a deadly weapon. At the conclusion of the hearing on the State's motion to adjudicate, the trial court pronounced Appellant's sentence as follows:

> [h]aving found each of these five allegations to be true, the Court hereby adjudicates you guilty of the crime of aggravated robbery classified as a first degree felony. The Court also notes the deadly weapon finding for that crime is, yes, a firearm.

The written *Judgment Adjudicating Guilt*, however, reflects "N/A" under the heading <u>Findings on Deadly Weapon</u>.

When there is a variation between the oral pronouncement of the trial court's judgment and the written memorialization of the judgment, the oral pronouncement controls. *Ette v. State*, 559 S.W.3d 511, 516 (Tex. Crim. App. 2018) (citing *Coffey v.*

State, 979 S.W.2d 326, 328 (Tex. Crim. App. 1998)). 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 power to reform a judgment is "not dependent upon the request of any party, nor does it turn on the question of whether a party has or has not objected in the trial court." *Id.* at 529-30. Thus, we modify the trial court's *Judgment Adjudicating Guilt* to reflect "YES, A FIREARM" under the heading Findings on Deadly Weapon in the summary portion of the judgment.

CONCLUSION

As modified, the trial court's *Judgment Adjudicating Guilt* is affirmed and counsel's motion to withdraw is granted.

Patrick A. Pirtle
Justice

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