



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

No. 07-21-00114-CR

ERICA K. MOORE, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 100th District Court
Carson County, Texas
Trial Court No. 6343; Honorable Stuart Messer, Presiding

January 19, 2022

MEMORANDUM OPINION

Before **PIRTLE** and **PARKER** and **DOSS, JJ.**

Appellant, Erica K. Moore, appeals from the trial court's *Judgment Adjudicating Guilt* for possession of methamphetamine in an amount less than one gram. She was sentenced to eighteen months confinement in a state jail facility and assessed a fine of

\$500.¹ In presenting this appeal, counsel has filed an *Anders*² brief in support of a motion to withdraw. We affirm 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). As required by *Anders* and *In re Schulman*, counsel provided a copy of the brief to Appellant and notified her of the right to file a *pro se* response if she desired to do so. However, counsel did not inform Appellant of her right to file a *pro se* petition for discretionary review.³ *In re Schulman*, 252 S.W.3d at 408.⁴ By letter, this court granted Appellant an opportunity to 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.

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

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

³ This court notified counsel by letter that she had not satisfied her educational burden to inform Appellant of her right to file a *pro se* petition for discretionary review. Counsel subsequently satisfied that notification requirement.

⁴ 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.

BACKGROUND

In December 2018, Appellant was placed on deferred adjudication community supervision for possession of methamphetamine in an amount of less than one gram. In October 2019, the State filed its Second Amended Motion to Adjudicate Guilt alleging numerous violations of the conditions of community supervision to which Appellant entered pleas of “true” to some of the allegations and “not true” to others.

Shortly after Appellant was placed on community supervision, her supervision was transferred from Carson County to Swisher County. At the revocation hearing, several community supervision officers testified regarding the conditions Appellant allegedly violated. Those violations included the following:

- failure to report monthly by form letter or online to Carson County after being transferred to Swisher County;
- failure to report in person in Swisher County;
- failure to remain in Swisher County after being transferred;
- failure to provide a specimen for drug testing;
- failure to perform any hours of the required 100 hours of community service;
- failure to report an arrest in April 2019 for driving with a suspended license;
- failure to find and maintain employment; and
- failure to abstain from marihuana use.

After the State rested, several witnesses testified on Appellant’s behalf. Their opinion was that Appellant should remain on community supervision. They believed she had made improvements and offered to provide her with the support necessary to comply with the conditions of community supervision.

Appellant testified in her defense. She is in her mid-thirties and has six children who are cared for by an aunt. She confirmed her pleas of true to some of the State's allegations and also admitted to using marihuana. She testified that she is currently employed full time and would like to be available to care for her children. Her fees and fines have all been paid.

After hearing testimony, the trial court found all but one of the State's allegations against Appellant to be true. The trial court found "not true" on the allegation that she was not employed. Based on the evidence presented and Appellant's pleas of true to some of the State's allegations, the trial court found Appellant guilty of the original offense of possession of a controlled substance in an amount less than one gram and sentenced her to eighteen months confinement.

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). 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 [her 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. *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012). 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 this *Anders* appeal, counsel has examined the record and found no non-frivolous grounds for reversal. Counsel does, however, explore whether the trial court abused its discretion in revoking Appellant's community supervision and also evaluates whether Appellant's sentence is disproportionate to the gravity of the offense. She then concedes there are no issues which would arguably support this appeal.

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).

CONCLUSION

The trial court's judgment is affirmed and counsel's motion to withdraw is granted.

Patrick A. Pirtle
Justice

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