In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-15-00050-CR

BRAD ALLEN DUNN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 71st District Court
Harrison County, Texas
Trial Court No. 14-0029X

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

There was no question at trial that Brad Allen Dunn had killed his wife, Kari Dunn, by stabbing her multiple times in a hotel bathroom, while the couple's children were just outside in the bedroom. Dunn's claim was that he murdered Kari while he was under the immediate influence of sudden passion arising from an adequate cause[1] and that, therefore, he was qualified for a lesser range of punishment. The jury rejected Dunn's claim, and he was sentenced to ninety-nine years' imprisonment and fined $10,000.00.

Dunn's appellate counsel has filed a brief that discusses the record and reviews the proceedings in detail. After counsel's professional evaluation of the record, he has concluded there are no arguable grounds to be advanced. This meets the requirements of *Anders v. California*, 386 U.S. 738 (1967); *Stafford v. State*, 813 S.W.2d 503 (Tex. Crim. App. 1991); and *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. [Panel Op.] 1978). Dunn has also filed a pro se brief. After conducting our own review of the record and the briefs, we find there are no meritorious grounds for appeal and affirm the trial court's judgment and sentence.

Counsel mailed a copy of the brief and a letter to Dunn on or about September 14, 2015, informing Dunn of his rights to file a pro se response and to review the record of the trial proceedings before doing so. Counsel states in his letter to Dunn he has sent him a copy of the

[1]*See* TEX. PENAL CODE ANN. § 19.02 (a)(2), (d) (West 2011). Dunn was arguing with Kari in the hotel bathroom. He stabbed her twenty-one times and cut her several more.

trial record.[2] Counsel has also filed a motion with this Court seeking to withdraw as counsel in this appeal.

Dunn has filed a pro se brief claiming that the trial court was biased against him and that this deprived him of a fair trial.[3] Dunn claims in his brief that, about a year before his trial, the trial judge had been a private attorney involved in some litigation for the Dunn family. Since Dunn killed Kari December 1, 2013, and the trial was not held until the first week of March 2015, it appears that the referenced litigation involved Dunn's three children and Kari's family. Neither the record nor Dunn's brief is clear on this point. We, however, find nothing in the record showing any trial or pretrial objection to the trial court's presiding over this case or supporting Dunn's claim that the trial court previously represented Dunn or had knowledge of any information outside the murder trial which could have been detrimental to Dunn. A claim of trial-court bias against the defendant is subject to the usual rules of preservation of error. *See Brewer v. State*, 572 S.W.2d 719, 721 (Tex. Crim. App. 1978) (where no objection made, remarks and conduct of court may

[2]Counsel has therefore complied with most of the Texas Court of Criminal Appeals' requirements listed in *Kelly v. State*, 436 S.W.3d 313, 319–21 (Tex. Crim. App. 2014). We observe counsel's letter to Dunn did not apprise Dunn of his right to seek discretionary review from the Court of Criminal Appeals of this Court's decision. But that right will not mature until the issuance of the instant opinion, and we inform Dunn of his right and attendant responsibilities in a footnote at the end of this opinion. *See id.* at 319.

[3]Dunn spends the first fourteen pages of his brief recounting his view of events, about his ten-year marriage to Kari, his depression, sadness, anger, and frustration at her wanting a divorce, the couple's difficulties, and his claim that Kari had begun a relationship with another man after she had left Dunn. Dunn makes several conclusory allegations complaining of his trial counsel's performance, publicity surrounding the proceedings before and during trial, and what Dunn characterizes as the unfairness of his trial. These complaints are either not specifically and adequately argued and briefed or were not preserved with trial objections. *See* TEX. R. APP. P. 33.1; 38.1.

not be subsequently challenged unless fundamentally erroneous); TEX. R. APP. P. 33.1(a).[4] We overrule Dunn's pro se point of error.

Although not specifically addressed as points of error, there are other complaints in Dunn's brief, which, in the interest of justice, we will address.

Dunn complains of the jury's rejection of his claim of sudden passion. *See* TEX. PENAL CODE ANN. § 19.02(d). In exercising its role as fact-finder and evaluating witness credibility and weighing the evidence, the jury is free to accept or reject a defendant's theory of sudden passion. *See Velazquez v. State*, 222 S.W.3d 551, 555 (Tex. App.—Houston [14th Dist.] 2007, no pet.); *Trevino v. State*, 157 S.W.3d 818, 822 (Tex. App.—Fort Worth 2005, no pet.); *Dudley v. State*, 992 S.W.2d 565, 569 (Tex. App.—Texarkana 1999, no pet.). Dunn testified that the couple had been married ten years and that, after the children were born, Dunn became the primary or sole breadwinner, which led to financial and personal strife between the spouses. Dunn also testified to his resentment at Kari's alleged failure or refusal to seek employment and to his sometimes expressing this anger in crass and vulgar terms. Dunn also claimed that Kari announced she wanted a divorce several weeks before her tragic end and, in that time, began seeing another man. Dunn said he rented a motel room to have an overnight visitation with the children. On their arrival, Dunn and Kari sat in the hotel room's bathroom, smoking cigarettes and talking about their separation, Dunn pleading for reconciliation. Here, Dunn said his sadness, depression, frustration, and anger boiled over, he "snapped" or "froze," and he repeatedly plunged his pocket knife into Kari's neck, face, and torso. He fled, snatching up one of his toddlers, and called family members

[4]Dunn points out, and we have found, no comments by the trial court remotely suggesting bias or partiality.

trying to tell them what had happened. He led police officers on a pursuit, before finally stopping and surrendering.

The jury was free to weigh Dunn's version of events and believe or disbelieve it. The court's jury charge explained the terms involved in sudden passion in compliance with the language of the Texas Penal Code, and we observe no misstatements of law by either party or the trial court. *See* TEX. PENAL CODE ANN. § 19.02(d).

Dunn also makes several complaints about his attorney's representation. When he entered his plea of guilty, Dunn told the court he was satisfied with counsel's performance. Dunn complains of counsel's strategy and conduct at the punishment phase of trial, but nothing in the record subverts the "strong presumption that counsel's performance fell within the wide range of reasonably professional assistance." *Robertson v. State*, 187 S.W.3d 475, 483 (Tex. Crim. App. 2006) (citing *Strickland v. Washington*, 466 U.S. 668, 689 (1984)). "[C]laims of ineffective assistance of counsel are generally not successful on direct appeal and are more appropriately urged in a hearing on an application for a writ of habeas corpus." *Lopez v. State*, 343 S.W.3d 137, 143 (Tex. Crim. App. 2011). Where, as here, the record is silent as to counsel's conduct of an accused's defense, "the record is . . . inadequately developed and 'cannot adequately reflect the failings of trial counsel' for an appellate court to fairly evaluate the merits of such a serious allegation.'" *Id*. (quoting *Bone v. State*, 77 S.W.3d 828, 833 (Tex. Crim. App. 2002); *Thompson v. State*, 9 S.W.3d 808, 813–814 (Tex. Crim. App. 1999)). There is nothing in the record establishing legally ineffective assistance of counsel and, hence, nothing establishing that Dunn's complaints rise to the level of such a violation.

We have determined that this appeal is wholly frivolous. We have independently reviewed the clerk's record and the reporter's record and find no genuinely arguable issue. *See Halbert v. Michigan*, 545 U.S. 605, 623 (2005). We, therefore, agree with counsel's assessment that no arguable issues support an appeal. *See Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005).

We affirm the judgment of the trial court.[5]

Josh R. Morriss, III
Chief Justice

Date Submitted: February 24, 2016
Date Decided: March 9, 2016

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[5]Since we agree this case presents no reversible error, we also, in accordance with *Anders*, grant counsel's request to withdraw from further representation of appellant in this case. *Anders*, 386 U.S. at 744. No substitute counsel will be appointed. Should appellant wish to seek further review of this case by the Texas Court of Criminal Appeals, appellant must either retain an attorney to file a petition for discretionary review or appellant must file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days from either the date of this opinion or the date on which the last timely motion for rehearing was overruled by this Court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with the clerk of the Texas Court of Criminal Appeals. *See* TEX. R. APP. P. 68.3. Any petition for discretionary review should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 68.4.