



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

No. 06-16-00087-CR

DEMORRIO DAVIS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 202nd District Court
Bowie County, Texas
Trial Court No. 13F0354-202

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

MEMORANDUM OPINION

A jury found Demorrio Davis guilty of failing to comply with registration requirements. *See* TEX. CODE CRIM. PROC. ANN. art. 62.102 (West Supp. 2016). Davis, who was sentenced to ten years' confinement, appeals.

Davis' attorney on appeal has filed a brief which states that he has reviewed the record and has found no genuinely arguable issues that could be raised. The brief sets out the procedural history and summarizes the evidence elicited during the course of the trial proceeding. Meeting the requirements of *Anders v. California*, counsel has provided a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced on appeal. *Anders v. California*, 386 U.S. 738, 743–44 (1967); *In re Schulman*, 252 S.W.3d 403, 406 (Tex. Crim. App. 2008) (orig. proceeding); *Stafford v. State*, 813 S.W.2d 503, 509–10 (Tex. Crim. App. 1991); *High v. State*, 573 S.W.2d 807, 812–13 (Tex. Crim. App. [Panel Op.] 1978). Counsel also filed a motion with this Court seeking to withdraw as counsel in this appeal.

On December 16, 2016, counsel mailed to Davis copies of the brief, the appellate record, and the motion to withdraw. Davis was informed of his right to review the record and file a pro se response, and requested an extension of time in which to do so. This Court granted Davis' request for an extension of time in which to file a pro se response and informed Davis that any pro se response was due on or before March 29, 2017. Davis did not file a pro se response.

We have reviewed the entire appellate record and have independently determined that no reversible error exists. Yet, in *Anders* cases, appellate courts “have the authority to reform judgments and affirm as modified in cases where there is non reversible error.” *Ferguson v. State*,

435 S.W.3d 291, 294 (Tex. App.—Waco 2014, pet. struck) (comprehensively discussing appellate cases that have modified judgments in *Anders* cases). Here, we conclude that the judgment must be modified to state the correct level of offense.

The relevant portions of Article 62.102 state:

(b) An offense under this article is:

(1) a state jail felony if the actor is a person whose duty to register expires under Article 62.101(b) or (c); . . .

(c) If it is shown at the trial of a person for an offense or an attempt to commit an offense under this article that the person has previously been convicted of an offense or an attempt to commit an offense under this article, the punishment for the offense or the attempt to commit the offense is increased to the punishment for the next highest degree of felony.

TEX. CODE CRIM. PROC. ANN. art. 62.102.

The State’s indictment in this case contained an enhancement paragraph. As the trial court’s punishment charge correctly stated, the level of the offense in Davis’ case was a state jail felony, but Davis’ prior conviction for failing to comply with registration requirements was used to enhance the punishment range. While the punishment range was enhanced, the level of offense remained the same. *Ford v. State*, 334 S.W.3d 230, 235 (Tex. Crim. App. 2011) (“[W]e hold that Article 62.102(c) does not increase the level of the offense.”). Accordingly, we modify the trial court’s judgment to reflect that Davis was convicted of a state jail felony.

We affirm the trial court's judgment, as modified.¹

Josh R. Morriss, III
Chief Justice

Date Submitted: May 4, 2017
Date Decided: May 5, 2017

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¹Since we agree that 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. *See Anders*, 386 U.S. at 744. No substitute counsel will be appointed. Should appellant desire to seek further review of this case by the Texas Court of Criminal Appeals, he must either retain an attorney to file a petition for discretionary review or file a pro se petition for discretionary review. Any petition for discretionary review (1) 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, (2) must be filed with the clerk of the Texas Court of Criminal Appeals, *see* TEX. R. APP. P. 68.3, and (3) should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure, *see* TEX. R. APP. P. 68.4.