



IN THE
TENTH COURT OF APPEALS

No. 10-10-00022-CR

MICHAEL ANSHUN WALKER,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 13th District Court
Navarro County, Texas
Trial Court No. 30597

MEMORANDUM OPINION

Michael Anshun Walker was convicted of possession of a controlled substance with the intent to deliver, within a drug-free zone. TEX. HEALTH & SAFETY CODE ANN. §§ 481.112(a), (d); 481.134(c) (Vernon 2010). He was sentenced to 65 years in prison and assessed a \$10,000 fine. We affirm.

Walker's appellate counsel filed an *Anders* brief and a motion to withdraw as counsel. See *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Counsel concludes that the appeal is frivolous. Walker was informed of the right to file a pro se response to his counsel's *Anders* brief. Walker attempted to file a response;

however, it was not properly served. Walker was given an opportunity to correct that deficiency but did not do so. Because Walker did not provide proper proof of service, his response was stricken.

Counsel's brief evidences a professional evaluation of the record for error, and we conclude that counsel performed the duties required of appointed counsel. *See Anders*, 386 U.S. at 744; *High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978); *see also In re Schulman*, 252 S.W.3d at 407.

In reviewing an *Anders* appeal, we must, "after a full examination of all the proceedings, . . . decide whether the case is wholly frivolous." *Anders* at 744; *accord Stafford v. State*, 813 S.W.2d 503, 509-11 (Tex. Crim. App. 1991); *Coronado v. State*, 996 S.W.2d 283, 285 (Tex. App.—Waco 1999, order) (per curiam), disp. on merits, 25 S.W.3d 806 (Tex. App.—Waco 2000, pet. ref'd). An appeal is "wholly frivolous" or "without merit" when it "lacks any basis in law or fact." *McCoy v. Court of Appeals*, 486 U.S. 429, 439 n.10, 108 S. Ct. 1895, 100 L. Ed. 2d 440 (1988). Arguments are frivolous when they "cannot conceivably persuade the court." *McCoy*, 486 U.S. at 436. An appeal is not wholly frivolous when it is based on "arguable grounds." *Stafford*, 813 S.W.2d at 511.

After reviewing the brief and the entire record in this appeal, we determine the appeal to be wholly frivolous. *See Bledsoe v. State*, 178 S.W.3d at 826-27. Accordingly, we affirm the trial court's judgment.

Should Walker wish to seek further review of this case by the Texas Court of Criminal Appeals, Walker must either retain an attorney to file a petition for discretionary review or Walker must file a pro se petition for discretionary review. Any

petition for discretionary review must be filed within thirty days from the date of either this opinion or the last timely motion for rehearing that was overruled by this Court. See TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with this Court, after which it will be forwarded to the Texas Court of Criminal Appeals along with the rest of the filings in this case. 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. See also *In re Schulman*, 252 S.W.3d 403, 409 n.22 (Tex. Crim. App. 2008) (citing *Glover v. State*, No. 06-07-00060-CR, 2007 Tex. App. LEXIS 9162 (Tex. App.—Texarkana Nov. 20, 2007, pet. ref'd) (not designated for publication).

Counsel's request that she be allowed to withdraw from representation of Walker is granted. Additionally, counsel must send Walker a copy of our decision, notify Walker of his right to file a pro se petition for discretionary review, and send this Court a letter certifying counsel's compliance with Texas Rule of Appellate Procedure 48.4. TEX. R. APP. P. 48.4; see also *In re Schulman*, 252 S.W.3d at 409 n. 22.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Reyna, and
Justice Davis

Affirmed
Opinion delivered and filed August 25, 2010
Do not publish
[CR25]