



IN THE
TENTH COURT OF APPEALS

No. 10-12-00258-CR

LEONARD NINO, JR.,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 19th District Court
McLennan County, Texas
Trial Court No. 2011-2522-C1

MEMORANDUM OPINION

Leonard Nino, Jr. pleaded guilty to the offense of driving while intoxicated. Nino also pleaded true to the enhancement and habitual allegations. The jury assessed punishment at 99 years confinement. We affirm.

Nino's appellate attorney filed an *Anders* brief in this appeal. See *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Nino was informed of his right to submit a brief or other response on his own behalf, and he did. However, we review a pro se brief or other response solely to determine if there are any arguable

grounds for appeal. *Bledsoe v. State*, 178 S.W.3d 824, 827 (Tex. Crim. App. 2005); *see also In re Schulman*, 252 S.W.3d 403, 409 n. 23 (Tex. Crim. App. 2008).

Counsel asserts that he has “thoroughly and conscientiously” reviewed the complete reporter’s record and clerk’s record in the underlying proceeding in search of potentially meritorious issues on appeal. Counsel concludes that after due diligence, he can find no potentially meritorious issues to assert and is of the opinion that the appeal is frivolous. 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 403, 407 (Tex. Crim. App. 2008).

In reviewing an *Anders* appeal, we must, “after a full examination of all the proceedings, ... decide whether the case is wholly frivolous.” *See Anders*, 386 U.S. at 744; *accord Stafford v. State*, 813 S.W.2d 503, 509-11 (Tex. Crim. App. 1991). 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.” *Id.* 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 briefs, including Nino’s pro se response, and the entire record in this appeal, we determine the appeal to be wholly frivolous. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). Accordingly, we affirm the trial court's judgment.

Should Nino wish 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 must file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days from the date of this opinion or the last timely motion for rehearing or timely motion for en banc reconsideration was overruled by this Court. See TEX. R. APP. P. 68.2. Any petition and all copies of the petition for discretionary review must be filed with the Clerk of the Court of Criminal Appeals. See TEX. R. APP. P. 68.3. (Tex. Crim. App. 1997, amended eff. Sept. 1, 2011). 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 at 409 n.22.

Counsel's request that he be allowed to withdraw from representation of Nino is granted. Additionally, counsel must send Nino a copy of our decision, notify him 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.

AL SCOGGINS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed

Motion to withdraw granted

Opinion delivered and filed September 5, 2013

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[CRPM]