



IN THE
TENTH COURT OF APPEALS

No. 10-17-00176-CR

REID AUSTIN GATHINGS,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 82nd District Court
Falls County, Texas
Trial Court No. 9750

MEMORANDUM OPINION

Reid Austin Gathings was convicted of Theft of Cattle and sentenced to 10 years in prison. *See* TEX. PENAL CODE ANN. § 31.03(e)(5)(A) (West 2011). Gathings's sentence was suspended and he was placed on community supervision for 10 years.

Gathings's appellate attorney filed a motion to withdraw and an *Anders* brief in support of the motion to withdraw, asserting that the appeal presents no issues of arguable merit. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Counsel advised Gathings that counsel had filed the motion and brief pursuant to *Anders* and provided Gathings a copy of the record, advised Gathings of his right to review the

record, and advised Gathings of his right to submit a response on his own behalf. Gathings did not submit a response.

Counsel asserts in the *Anders* brief that counsel has made a thorough review of the entire reporter's record and clerk's record, and reviewed voir dire, the guilt and punishment phases of the trial, the sufficiency of the evidence to support the conviction, the punishment imposed, and the trial court's judgment. After the review, counsel has concluded there is no non-frivolous issue to raise in this appeal. 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).

Upon the filing of an *Anders* brief, as the reviewing appellate court, it is our duty to independently examine the record to decide whether counsel is correct in determining that an appeal is frivolous. See *Anders*, 386 U.S. at 744; *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). Arguments are frivolous when they "cannot conceivably persuade the court." *McCoy v. Court of Appeals*, 486 U.S. 429, 436, 108 S. Ct. 1895, 100 L. Ed. 2d 440 (1988).

Having carefully reviewed the entire record and the *Anders* brief, we have determined that the appeal is frivolous. See *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). Accordingly, we affirm the trial court's Judgment of Conviction by Jury signed on May 9, 2017.

Should Gathings 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. No substitute counsel will be appointed. 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 has been 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 motion to withdraw from representation of Gathings is granted, and counsel is discharged from representing Gathings in this appeal. Notwithstanding counsel's discharge, counsel must send Gathings 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.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed

Opinion delivered and filed December 27, 2017

Do not publish

[CR25]

