

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-01-00255-CR

Benny Lavoy Smith, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF IRION COUNTY, 51ST JUDICIAL DISTRICT
NO. CR00-001, HONORABLE BARBARA WALTHER, JUDGE PRESIDING**

A jury found appellant Benny Lavoy Smith guilty of aggravated sexual assault and assessed punishment at imprisonment for ten years and a \$10,000 fine. *See* Tex. Pen. Code Ann. § 22.021 (West Supp. 2002). On the jury's recommendation, the court suspended imposition of sentence and placed Smith on community supervision.

Smith's court-appointed attorney filed a brief concluding that the appeal is frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967), by advancing contentions which counsel says might arguably support the appeal. *See also* *Penson v. Ohio*, 488 U.S. 75 (1988); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978); *Currie v. State*, 516 S.W.2d 684 (Tex. Crim. App. 1974); *Jackson v. State*, 485 S.W.2d 553 (Tex. Crim. App. 1972); *Gainous v. State*, 436 S.W.2d 137 (Tex. Crim. App. 1969). Smith also filed a pro se brief.

We have reviewed the record and agree with counsel that the appeal is frivolous and without merit. For the reasons discussed in counsel's brief, none of the arguable points presents

reversible error. The inconsistencies in the testimony cited by Smith in his pro se brief do not warrant his conclusion that witnesses perjured themselves.

Counsel's motion to withdraw is granted. The judgment of conviction is affirmed.

Bea Ann Smith, Justice

Before Chief Justice Aboussie, Justices B. A. Smith and Puryear

Affirmed

Filed: December 13, 2001

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