

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-04-00548-CR

Deloes Ockleberry, Jr., Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF BELL COUNTY, 27TH JUDICIAL DISTRICT
NO. 56109, HONORABLE MARTHA J. TRUDO, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Deloes Ockleberry, Jr., pleaded guilty to burglary of a habitation. *See* Tex. Pen. Code Ann. § 30.02 (West 2003). The court adjudged him guilty and assessed punishment, enhanced by a previous felony conviction, at imprisonment for life and a \$2500 fine.

Ockleberry'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 demonstrating that the only arguable contentions that might support the appeal are ultimately without merit. *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).

As was his right, Ockleberry filed a pro se brief. His primary complaint is that his trial attorney did not provide effective assistance. Ockleberry asserts that counsel failed to investigate the facts of the case and failed to produce evidence, including testimony by family members and friends, regarding Ockleberry's mental illness. He also urges that counsel was ineffective for having urged him to plead guilty knowing that he was mentally ill and under the influence of medication.

The record contains a copy of the presentence investigation report. This report states that Ockleberry takes medication for depression. There is no indication, however, that he is mentally ill. Both he and his attorney assured the trial court that he was competent, and there is nothing in the record to suggest otherwise. There is no evidence to support any of Ockleberry's other complaints regarding his attorney. He has not overcome the presumption that counsel rendered reasonable professional assistance. *See Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994).

Ockleberry also urges that the trial court abused its discretion by failing to take into account his mental health history in assessing punishment. Given Ockleberry's criminal record, the punishment assessed was within the range prescribed for the offense. There is no basis in the record for finding an abuse of discretion.

We have reviewed the record, counsel's brief, and the pro se brief. We find nothing in the record that might arguably support the appeal. Counsel's motion to withdraw is granted.

The judgment of conviction is affirmed.

Bea Ann Smith, Justice

Before Justices B. A. Smith, Puryear and Pemberton

Affirmed

Filed: March 17, 2005

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