TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-05-00201-CR

David Eugene Weir, Appellant

v.

The State of Texas, Appellee

FROM THE DISTRICT COURT OF BELL COUNTY, 27TH JUDICIAL DISTRICT
NO. 57344, HONORABLE JOE CARROLL, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

Appellant David Eugene Weir pleaded no contest to an information accusing him of burglary of a building enhanced by two previous burglary convictions. *See* Tex. Pen. Code Ann. § 12.42(a)(1) (West Supp. 2004-05), § 30.02 (West 2003). As called for in a plea bargain, the court deferred adjudication and placed Weir on community supervision for five years. The court gave its permission to appeal.

Weir'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 presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *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).

Weir filed a pro se brief asserting that his plea was involuntary because he did not know that he was pleading guilty to a third-degree felony, did not understand the plea bargain with respect to restitution, and was misinformed by counsel regarding the terms of the agreement. All of the issues Weir raises were addressed at a "hearing to clarify probation" conducted by the district court on March 9, 2005. At the conclusion of the hearing, the court informed Weir that he would be permitted to withdraw his plea. Weir conferred with counsel, who then told the court, "I discussed with Mr. Weir what his options are, and he does not want to withdraw his plea. He will accept the restitution per the PSI." Having reviewed the full record, we find no basis for Weir's contention that his plea was unknowing and involuntary, or for his contention that he was denied an opportunity to withdraw the plea.

We have reviewed the record, counsel's brief, and the pro se brief. We agree that the appeal is frivolous and without merit. We find nothing in the record that might arguably support the appeal. Counsel's motion to withdraw is granted.

The order deferring adjudication is affirmed.

_____

Bea Ann Smith, Justice

Before Justices B. A. Smith, Patterson and Puryear

Affirmed

Filed: October 13, 2005

Do Not Publish