TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00795-CR

Timothy Dwight Onkst, Appellant

v.

The State of Texas, Appellee

FROM THE COUNTY COURT AT LAW NO. 4 OF TRAVIS COUNTY
NO. C-1-CR-15-405373, THE HONORABLE MIKE DENTON, JUDGE PRESIDING

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

Appellant Timothy Dwight Onkst pled no contest to the misdemeanor offense of simulating legal process, *see* Tex. Penal Code § 32.48, pursuant to a negotiated plea bargain, reserving the right to appeal the trial court's denial of his pretrial written motions, *see* Tex. Code Crim. Proc. art. 44.02, Tex. R. App. P. 25.2(a)(2)(A). Pursuant to the plea agreement, the trial court deferred adjudication of guilt and placed appellant on community supervision for two years. *See* Tex. Code Crim. Proc. art. 42.12, § 5(a) (now Tex. Code Crim. Proc. art. 42A.101).

Appellant's court-appointed attorney has filed a motion to withdraw supported by a brief concluding that the appeal is frivolous and without merit. The brief meets the requirements of *Anders v. California* by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See Anders v. California*, 386 U.S. 738, 744 (1967);

Garner v. State, 300 S.W.3d 763, 766 (Tex. Crim. App. 2009); *see also Penson v. Ohio*, 488 U.S. 75, 81–82 (1988).

Appellant's counsel has certified to this Court that he sent copies of the motion and brief to appellant, advised appellant of his right to examine the appellate record and file a pro se response, and provided a motion to assist appellant in obtaining the record. *See Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014); *see also Anders*, 386 U.S. at 744. Appellant requested access to the appellate record, and pursuant to this Court's order the clerk of the trial court provided written verification to this Court that the record was provided to appellant. *See Kelly*, 436 S.W.3d at 321. Appellant has filed a pro se response in which he argues that the trial court erred in denying his pretrial written motions, complains about trial court errors not related to the denial of his pretrial written motions, asserts due process violations, and claims that he did not receive adequate legal representation.

This is a plea-bargain case in which appellant has limited appeal rights. A plea-bargaining defendant may appeal only matters raised by written motion filed and ruled on before trial, unless the trial court has granted permission to appeal beyond those matters. *See* Tex. Code Crim. Proc. art. 44.02; Tex. R. App. P. 25.2(a)(2); *see also Shankle v. State*, 119 S.W.3d 808, 811–12 (Tex. Crim. App. 2003) (analyzing Texas Code of Criminal Procedure article 44.02 and Texas Rule of Appellate Procedure 25.2(b)). The trial court here did not grant appellant such permission. Thus, this Court's jurisdiction is limited to those matters raised in appellant's written motions ruled on before appellant entered his no contest plea—a limitation specified in the trial court's certification of appellant's right to appeal and consistent with a plea-bargaining defendant's

right to appeal. *See* Tex. R. App. P. 25.2(a)(2)(1); Tex. Code Crim. App. 44.02. Consequently, appellant's complaints about trial court errors not related to the denial of his pretrial written motions, assertions of due process violations, and claims of inadequate legal representation exceed the scope of this appeal and this Court's jurisdiction.

As to the trial court's denial of appellant's pretrial written motions, we have conducted an independent review of the record—including the record of the proceedings on appellant's pretrial motions and appellate counsel's brief—and find no reversible error. *See Anders*, 386 U.S. at 744; *Garner*, 300 S.W.3d at 766; *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). We agree with counsel that the record presents no arguably meritorious grounds for review and this appeal is frivolous. Counsel's motion to withdraw is granted. The trial court's order of community supervision is affirmed.

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Melissa Goodwin, Justice

Before Justices Puryear, Pemberton, and Goodwin

Affirmed

Filed: June 14, 2017

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