NUMBER 13-16-00430-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

CARLOS HOLGUIN, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 94th District Court of Nueces County, Texas.

MEMORANDUM OPINION

Before Justices Contreras, Benavides, and Longoria
Memorandum Opinion by Justice Benavides

A Nueces County jury convicted appellant Carlos Holguin of intoxication manslaughter, a second-degree felony. *See* TEX. PENAL CODE ANN. § 49.08 (West, Westlaw through 2015 R.S.). The jury sentenced Holguin to ten years' imprisonment with the Texas Department of Criminal Justice—Institutional Division (TDCJ—ID). The

trial court ordered Holguin's sentence suspended and placed him on community supervision subject to various court-ordered conditions.

On June 17, 2016, the trial court revoked Holguin's community supervision after finding that Holguin: (1) did not install and use his deep-lung breath-analysis mechanism as ordered; and (2) did not spend fifty consecutive days/nights/weekends in Nueces County Jail as ordered. The trial court subsequently sentenced him to five years' imprisonment with TDCJ-ID. Holguin's court-appointed appellate counsel has filed an *Anders* brief. *See Anders v. California*, 386 U.S. 738, 744 (1967). We affirm.

I. *ANDERS* BRIEF

Pursuant to *Anders v. California*, Holguin's court-appointed appellate counsel has filed a brief and a motion to withdraw with this Court, stating that his review of the record yielded no grounds of error upon which an appeal can be predicated. *See id*. Counsel's brief meets the requirements of *Anders* as it presents a professional evaluation demonstrating why there are no arguable grounds to advance on appeal. *See In re Schulman*, 252 S.W.3d 403, 407 n.9 (Tex. Crim. App. 2008) ("In Texas, an *Anders* brief need not specifically advance 'arguable' points of error if counsel finds none, but it must provide record references to the facts and procedural history and set out pertinent legal authorities.") (citing *Hawkins v. State*, 112 S.W.3d 340, 343–44 (Tex. App.—Corpus Christi 2003, no pet.)); *Stafford v. State*, 813 S.W.2d 503, 510 n.3 (Tex. Crim. App. 1991).

In compliance with *High v. State* and *Kelly v. State*, Holguin's counsel carefully discussed why, under controlling authority, there is no reversible error in the trial court's judgment. *See Kelly v. State*, 436 S.W.3d 313, 319–22 (Tex. Crim. App. 2014); *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. [Panel Op.] 1978). Holguin's appellate

counsel also notified this Court that he: (1) notified Holguin that he has filed an *Anders* brief and a motion to withdraw; (2) provided Holguin with copies of both pleadings; (3) informed Holguin of his rights to file a pro se response, review the record preparatory to filing that response,[1] and seek discretionary review if we concluded that the appeal is frivolous; (4) provided Holguin with a complete copy of the reporter's record and clerk's record; and (5) informed Holguin that the pro se response, if any, should identify for the Court those issues which he believes the Court should consider in deciding whether the case presents any meritorious issues. *See Anders*, 386 U.S. at 744; *Kelly*, 436 S.W.3d at 319–20; *Stafford*, 813 S.W.2d at 510, n.3; *see also In re Schulman*, 252 S.W.3d at 409 n.23. A reasonable amount of time has passed, and Holguin has not filed a pro se brief.[2]

II. INDEPENDENT REVIEW

Upon receiving an *Anders* brief, we must conduct a full examination of all the proceedings to determine whether the case is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). A court of appeals has two options when an *Anders* brief and a subsequent pro se response are filed. After reviewing the entire record, it may: (1)

[1] The Texas Court of Criminal Appeals has held that "the pro se response need not comply with the rules of appellate procedure in order to be considered. Rather the response should identify for the court those issues which the indigent appellant believes the court should consider in deciding whether to case presents any meritorious issues." *In re Schulman*, 252 S.W.3d at 409 n.23 (quoting *Wilson v. State*, 955 S.W.2d 693, 696–97 (Tex. App.—Waco 1997, no pet.).

[2] Holguin did, however, file two identical motions with this Court entitled: "Defendant's Motion to Dismiss State's Motion to Revoke Community Supervision, or Alternatively, Motion for Timely Revocation Hearing and Motion for Bench Warrant." In these motions, Holguin asks this Court to dismiss the State's motion to revoke his community supervision, or in the alternative, order a bench warrant and proceed with a timely hearing on the State's motion to revoke.

Holguin's appeal stems from the revocation of his community supervision, after a timely hearing was held before the trial court on June 17, 2016. Holguin was present at the revocation hearing and testified on his own behalf. Accordingly, we dismiss both motions as moot.

determine that the appeal is wholly frivolous and issue an opinion explaining that it finds no reversible error; or (2) determine that there are arguable grounds for appeal and remand the case to the trial court for appointment of new appellate counsel. *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). If the court finds arguable grounds for appeal, it may not review those grounds until after new counsel has briefed those issues on appeal. *Id*.

We have reviewed the entire record and counsel's brief, and we have found nothing that would arguably support an appeal. *See id*. at 827–28 ("Due to the nature of *Anders* briefs, by indicating in the opinion that it considered the issues raised in the briefs and reviewed the record for reversible error but found none, the court of appeals met the requirement of Texas Rule of Appellate Procedure 47.1."); *Stafford*, 813 S.W.2d at 509. There is no reversible error in the record. Accordingly, the judgment of the trial court is affirmed.

III. MOTION TO WITHDRAW

In accordance with *Anders*, Holguin's attorney has asked this Court for permission to withdraw as counsel for appellant. *See Anders*, 386 U.S. at 744; *see also In re Schulman*, 252 S.W.3d at 408 n.17 (citing *Jeffrey v. State*, 903 S.W.2d 776, 779–80 (Tex. App.—Dallas 1995, no pet.) ("[I]f an attorney believes the appeal is frivolous, he must withdraw from representing the appellant. To withdraw from representation, the appointed attorney must file a motion to withdraw accompanied by a brief showing the appellate court that the appeal is frivolous.") (citations omitted)). We grant counsel's motion to withdraw. Within five days of this Court's opinion, counsel is ordered to send a copy of this opinion and this Court's judgment to Holguin and advise him of his right to

file a petition for discretionary review.[3] *See* TEX. R. APP. P. 48.4; *see also In re Schulman*, 252 S.W.3d at 412 n.35; *Ex Parte Owens*, 206 S.W.3d 670, 673 (Tex. Crim. App. 2006).

IV. REFORMATION OF JUDGMENT

On December 2, 2016**,** the trial court issued a judgment *nunc pro tunc* to correct the degree of the offense listed on the original judgment from a first-degree felony to a second-degree felony. In his brief, Holguin's counsel notes non-reversible errors in the judgment *nunc pro tunc* and asks this Court to modify the judgment to speak the truth, including: (1) an incorrect date of when Holguin was placed on probation; (2) an incorrect citation to the penal code provision for intoxication manslaughter; and (3) a misstatement of Holguin's plea regarding the allegations to revoke his probation.

The Texas Rules of Appellate Procedure allow this Court to modify judgments *sua sponte* to correct typographical errors and make the record speak the truth. TEX. R. APP. P. 43.2(b); *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992). Accordingly, we modify Holguin's judgment to state that: (1) Holguin's date of original community supervision order was November 1, 2007; (2) the statute under which Holguin was charged and convicted is Texas Penal Code § 49.08; and (3) Holguin pleaded not true to all of the allegations alleged in the State's motion to revoke, except for non-payment of

[3] No substitute counsel will be appointed. Should appellant 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 file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days from the date of either this opinion or the last timely motion for rehearing or timely motion for en banc reconsideration that was overrule by this Court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with the clerk of the Court of Criminal Appeals, *see* TEX. R. APP. P. 68.3, and should comply with the requirements of the Texas Rule of Appellate Procedure 68.4. *See* TEX. R. APP. P. 68.4.

costs and fees assessed.

V. CONCLUSION

We affirm the judgment of the trial court as modified.

GINA M. BENAVIDES,
Justice

Do not publish.
TEX. R. APP. P. 47.2 (b).

Delivered and filed the
13th day of April, 2017.