NOS. 12-10-00403-CR
12-10-00404-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

JASON LEE OLIVER, APPELLANT	***§***	***APPEALS FROM THE 114TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION
PER CURIAM

Jason Oliver appeals his convictions for assault-family violence and evading arrest. Appellant's counsel has filed a brief asserting compliance with ***Anders v. California***, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967) and ***Gainous v. State***, 436 S.W.2d 137 (Tex. Crim. App. 1969). We dismiss the appeal.

BACKGROUND

The indictment in appellate cause number 12-10-00403-CR alleged that on October 20, 2009, Appellant "intentionally, knowingly, or recklessly caused bodily injury to Jwuanmia Hatcher, a person with whom [Appellant] has or has had a dating relationship, as described by Section 71.0021(b), Family Code, by striking [her] with [a] phone" (the assault-family violence charge). The indictment in appellate cause number 12-10-00404-CR alleged that on November 30, 2009, Appellant "intentionally fle[d] from Johnny Vargas, a person [Appellant] knew was a peace officer who was attempting lawfully to arrest or detain [Appellant]" (the evading charge).

The indictment for the assault-family violence charge contained a penalty enhancement particularly that Appellant had been convicted of a prior assault-family violence charge on December 19, 2001. In addition, the indictment for the evading charge contained a penalty enhancement alleging that Appellant had a prior conviction for evading arrest or detention on June 11, 2009. The assault-family violence charge was elevated to a third degree felony punishment level,[1] and the evading charge was elevated to a state jail felony punishment level.[2]

In each case, Appellant executed a "Waiver of Jury Trial," an "Agreement to Stipulate Testimony," a "Stipulation of Evidence" that established all the essential elements for the charged offense, and an "Acknowledgment of Admonishments." He also made an open plea of guilty to the trial court. The trial court found him guilty, and after a punishment hearing, sentenced him to four years of imprisonment on the assault-family violence charge and eighteen months of imprisonment on the evading arrest charge. The trial court ordered that the sentences be served concurrently. This appeal followed.

ANALYSIS PURSUANT TO *ANDERS V. CALIFORNIA*

Appellant's counsel has filed a brief in compliance with ***Anders*** and ***Gainous***. Counsel states that he has diligently reviewed the appellate record and that he is well acquainted with the facts of this case. In compliance with ***Anders***, ***Gainous***, and ***High v. State***, 573 S.W.2d 807 (Tex. Crim. App. 1978), counsel's brief presents a thorough chronological summary of the procedural history of the case and further states that counsel is unable to present any arguable issues for appeal.[3] *See* ***Anders***, 386 U.S. at 745, 87 S. Ct. at 1400; *see also* ***Penson v. Ohio***, 488 U.S. 75, 80, 109 S. Ct. 346, 350, 102 L. Ed. 2d 300 (1988).

We have considered counsel's brief and have conducted our own independent review of the record. We found no reversible error. *See* ***Bledsoe v. State***, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005).

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[1] *See* TEX. PENAL CODE ANN. § 22.01(b)(2)(A) (Vernon 2011).

[2] *See* ***id.*** § 38.04(b)(1)(A) (Vernon 2011).

[3] Counsel for Appellant certified that he provided Appellant with a copy of his brief and informed Appellant that he had the right to file his own brief. Appellant was given time to file his own brief, but the time for filing such a brief has expired and we have received no pro se brief.

CONCLUSION

As required, Appellant's counsel has moved for leave to withdraw. *See* ***In re Schulman***, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008) (orig. proceeding); ***Stafford v. State***, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). We are in agreement with Appellant's counsel that the appeal is wholly frivolous. Accordingly, his motion for leave to withdraw is hereby ***granted***, and we ***dismiss*** this appeal. *See* ***In re Schulman***, 252 S.W.3d at 408-09 ("After the completion of these four steps, the court of appeals will either agree that the appeal is wholly frivolous, grant the attorney's motion to withdraw, and dismiss the appeal, or it will determine that there may be plausible grounds for appeal.").

Counsel has a duty to, within five days of the date of this opinion, send a copy of the opinion and judgment to Appellant and advise him of his right to file a petition for discretionary review. *See* TEX. R. APP. P. 48.4; ***In re Schulman***, 252 S.W.3d at 411 n.35. 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 he must file a pro se petition for discretionary review. *See* ***In re Schulman***, 252 S.W.3d at 408 n.22. 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 that was overruled by this court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with this court, after which it will be forwarded to the Texas Court of Criminal Appeals along with the rest of the filings in this case. *See* TEX. R. APP. P. 68.3.[4] Any petition for discretionary review should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 68.4; ***In re Schulman***, 252 S.W.3d at 408 n.22.

Opinion delivered September 7, 2011.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)

[4] Petitions should be filed directly with the Texas Court of Criminal Appeals. *See* TEX. R. APP. P. 68.3(a) (effective September 1, 2011).