

NO. 12-11-00168-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

OSCAR VERNON COLLINS,
APPELLANT

§

APPEAL FROM THE 7TH

V.

§

JUDICIAL DISTRICT COURT

THE STATE OF TEXAS,
APPELLEE

§

SMITH COUNTY, TEXAS

MEMORANDUM OPINION

Oscar Collins appeals his conviction for evading arrest or detention. Appellant’s counsel 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 affirm as modified.

BACKGROUND

A Smith County grand jury returned an indictment against Appellant for the offense of evading arrest or detention with a vehicle. The indictment also alleged that Appellant had a prior evading arrest conviction, making the offense a third degree felony.¹ Appellant pleaded guilty to the offense and pleaded true to the prior conviction. After hearing testimony from Appellant and argument from both the State and Appellant’s counsel, the trial court assessed punishment at five years of imprisonment. This appeal followed.

ANALYSIS PURSUANT TO *ANDERS V. CALIFORNIA*

Appellant’s counsel has filed a brief in compliance with *Anders* and *Gainous*. Counsel

¹ See TEX. PENAL CODE ANN. § 38.04 (West 2011).

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.² 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).

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. Therefore, his motion for leave to withdraw is hereby *granted*. We note, however, that the judgment of conviction states that restitution is "to be determined later" and "payable to Smith County Collections Department." But as counsel pointed out in his brief, the trial court made no oral pronouncement of restitution during sentencing. Accordingly, we *modify* the trial court's judgment to delete the provisions that restitution is "to be determined" and "payable to Smith County Collections Department," and *affirm as modified*. See TEX. R. APP. P. 43.2.

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 after the date of this opinion or after the date this court overrules the last timely motion for rehearing. See TEX. R. APP. P. 68.2(a). Any

² Counsel for Appellant states in his motion to withdraw that he provided Appellant with a copy of this brief. Appellant was given time to file his own brief in this cause. The time for filing such a brief has expired, and we have received no pro se brief.

petition for discretionary review must be filed with the clerk of the Texas Court of Criminal Appeals. *See* TEX. R. APP. P. 68.3(a). 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 April 18, 2012.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)