

NO. 12-11-00200-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***TONY LEEMARKA BATTLES,
APPELLANT***

§

APPEAL FROM THE

V.

§

COUNTY COURT AT LAW #2

***THE STATE OF TEXAS,
APPELLEE***

§

SMITH COUNTY, TEXAS

***MEMORANDUM OPINION
PER CURIAM***

Tony LeeMarka Battles appeals his conviction for possession of marihuana. 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 affirm.

BACKGROUND

The State charged Appellant by information with the misdemeanor offense of possession of marihuana in 2010. As alleged, the offense was a class A misdemeanor because it was alleged that Appellant possessed less than two ounces of marihuana within one thousand feet of a public park.¹ Appellant pleaded guilty. The trial court accepted his plea of guilty and placed him on deferred adjudication community supervision for a period of two years.

In 2011, the State filed an application to proceed to final adjudication. In its application, the State alleged that Appellant consumed and possessed marihuana, failed to complete his community service obligations, failed to pay fees, and failed to submit proof that he had

¹ See TEX. HEALTH & SAFETY CODE ANN. §§ 481.121(b)(1), 481.134(f)(1) (West 2010 & Supp. 2011).

handwritten a specific sentence twenty-five times per day for the period of January 11 to January 30, 2011. Appellant pleaded true to the allegations. The trial court found that he had violated the terms of his community supervision, found him guilty, and assessed a sentence of confinement for one year and a fine of two hundred dollars. 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.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. Accordingly, his motion for leave to withdraw is hereby *granted*, and we *affirm* the trial court's judgment. 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

² Counsel for Appellant states in his motion to withdraw that he provided Appellant with a copy of his brief and of the record. 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.

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 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 May 31, 2012.

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

(DO NOT PUBLISH)



**COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT**

MAY 31, 2012

NO. 12-11-00200-CR

TONY LEEMARKA BATTLES,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the County Court at Law #2 of
Smith County, Texas. (Tr.Ct.No. 002-83484-10)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, Appellant's counsel's motion for leave to withdraw is hereby **granted**; and that this decision be certified to the trial court below for observance.

By *per curiam* opinion.

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