

NO. 12-11-00273-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*SHAWANNA MACKEY,
APPELLANT*

§

APPEAL FROM THE 114TH

V.

§

JUDICIAL DISTRICT COURT

*THE STATE OF TEXAS,
APPELLEE*

§

SMITH COUNTY, TEXAS

***MEMORANDUM OPINION
PER CURIAM***

Shawanna Mackey appeals her conviction for assault—family violence. 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

In 2008, Appellant was indicted for assault—family violence, for an assault she allegedly committed against a family member during an argument over a bicycle. The indictment also contained an enhancement, alleging that Appellant had a prior conviction of assault—family violence, which raised the punishment level to that of a third degree felony. Appellant pleaded guilty to the offense. The State recommended community supervision or a short period of imprisonment. The trial court placed Appellant on deferred adjudication community supervision for five years.

In 2011, the State filed a motion to adjudicate Appellant’s guilt, alleging several violations of the terms of her community supervision. Specifically, the motion alleged that while Appellant

“had custody, care, or control of . . . a child younger than 15 years, [she] intentionally abandoned [the child], in a place under circumstances that exposed the [child] to an unreasonable risk of harm, to-wit: broken glass from a window, and . . . did not voluntarily deliver the child to a designated emergency infant care provider” The motion also alleged that Appellant failed to report to her community supervision officer from July 2010 through June 2011, failed to notify her community supervision officer of a change in her address, and failed to pay her \$60.00 per month community supervision fee from July 2010 through June 2011.

At the hearing on the motion, the State abandoned the allegation that Appellant failed to notify her community supervision officer of her change of address. Appellant pleaded “true” to the remaining allegations. The trial court found Appellant guilty of the charged offense, revoked her community supervision, and sentenced her to eight 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 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.¹ 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 have 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**

¹ Counsel for Appellant certified that he provided Appellant with a copy of his brief and informed Appellant that she had the right to file her own brief. Appellant was given time to file her own brief, but the time for filing such a brief has expired and we have received no pro se brief.

the judgment of the trial court. See TEX. R. APP. P. 43.2(b).

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 her of her 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, she must either retain an attorney to file a petition for discretionary review or she 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 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 August 30, 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**

AUGUST 30, 2012

NO. 12-11-00273-CR

SHAWANNA MACKEY,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 114th Judicial District Court
of Smith County, Texas. (Tr.Ct.No. 114-0274-08)

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 Appellant's counsel's motion to withdraw is **granted**, the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

By *per curiam* opinion.

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