

NO. 12-11-00315-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>MATTHEW DEWAYNE PATTON,</i>	§	<i>APPEAL FROM THE 7TH</i>
<i>APPELLANT</i>		
<i>V.</i>	§	<i>JUDICIAL DISTRICT COURT</i>
<i>THE STATE OF TEXAS,</i>		
<i>APPELLEE</i>	§	<i>SMITH COUNTY, TEXAS</i>

MEMORANDUM OPINION
PER CURIAM

Matthew DeWayne Patton appeals his conviction for burglary. 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

A Smith County grand jury indicted Appellant for the felony offense of burglary. As alleged, the offense was a first degree felony because it was alleged that Appellant entered a habitation with the intent to commit an aggravated robbery or an aggravated assault.¹ Appellant pleaded guilty without a plea agreement. The trial court considered the evidence presented at a sentencing hearing² and assessed a sentence of imprisonment for forty-five years. This appeal followed.

¹ See TEX. PENAL CODE ANN. § 30.02(d). (West 2011).

² The evidence offered at the sentencing hearing showed that Appellant and another individual forcibly entered an occupied apartment early one morning. The other individual had a gun. One of the apartment dwellers, a police officer, shot Appellant twice during the incident.

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).

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 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.

³ 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.

68.4; ***In re Schulman***, 252 S.W.3d at 408 n.22.

Opinion delivered June 29, 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**

JUNE 29, 2012

NO. 12-11-00315-CR

MATTHEW DEWAYNE PATTON,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 7th Judicial District Court of
Smith County, Texas. (Tr.Ct.No. 007-0437-11)

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 for leave to withdraw is hereby **granted**; the judgment of the court below **be in all things affirmed**; 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.