

**NOS. 12-11-00353-CR
12-11-00354-CR**

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>MARQUISE DEMON RUSSELL, APPELLANT</i>	§	<i>APPEALS FROM THE 7TH</i>
<i>V.</i>	§	<i>JUDICIAL DISTRICT COURT</i>
<i>THE STATE OF TEXAS, APPELLEE</i>	§	<i>SMITH COUNTY, TEXAS</i>

***MEMORANDUM OPINION
PER CURIAM***

Marquise Demon Russell appeals his convictions of possession of a controlled substance with intent to deliver (cause number 12-11-00353-CR) and delivery of a controlled substance (cause number 12-11-00354-CR). 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.

BACKGROUND

A Smith County grand jury returned two indictments against Appellant alleging that he committed the offense of possession of a controlled substance with intent to deliver (cause number 12-11-00353-CR) and delivery of a controlled substance (cause number 12-11-00354-CR).¹ The indictments also alleged a prior felony conviction, increasing the punishment range in each case to that of a first degree felony. Appellant pleaded guilty to both offenses and pleaded true to the enhancement in each case. After a hearing on sentencing, the trial court assessed punishment at

¹ See TEX. HEALTH & SAFETY CODE ANN. § 481.112 (West 2011).

thirty-five years of imprisonment in each case, with the sentences to run 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.² See *Anders*, 386 U.S. at 744, 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 judgment of the trial court. 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 these causes. The time for filing such a brief has expired, and we have received no pro se brief in either cause.

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 July 11, 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**

JULY 11, 2012

**NOS. 12-11-00353-CR
12-11-00354-CR**

MARQUISE DEMON RUSSELL,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeals from the 7th Judicial District Court of
Smith County, Texas. (Tr.Ct.Nos. 007-0665-11; 007-0666-11)

THESE CAUSES 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 were no errors in the judgments.

It is therefore ORDERED, ADJUDGED and DECREED that Appellant's counsel's motion for leave to withdraw is hereby **granted**; the judgments 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.*