

NO. 12-11-00387-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*ANITA RENEE MCGILL,
APPELLANT*

§

APPEAL FROM THE 114TH

V.

§

JUDICIAL DISTRICT COURT

*THE STATE OF TEXAS,
APPELLEE*

§

SMITH COUNTY, TEXAS

***MEMORANDUM OPINION
PER CURIAM***

Anita Renee McGill appeals her conviction for aggravated assault with a deadly weapon. 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

Appellant was indicted for aggravated assault with a deadly weapon. The indictment alleged that she stabbed Teresa Kate Hill with a knife. She entered an open plea of "guilty" to the indictment without an agreement as to punishment. After admonishing Appellant regarding her rights, the trial court accepted her plea and found there was sufficient evidence to find her guilty, but withheld the finding at that time. The trial court ordered the preparation of a full presentence investigation report.

Ultimately, the trial court assessed punishment at eight years of imprisonment and \$17,516.55 as restitution, but the judgment did not identify the restitution payee, and no oral pronouncement was made on this issue during sentencing. Appellant appealed to this court. The

case was transferred to the Sixth Court of Appeals in Texarkana pursuant to a Texas Supreme Court docket equalization order. The Texarkana court reversed the judgment of the trial court as it pertained to restitution, and remanded for the limited issue of identifying the correct payee for restitution.¹

On remand, the trial court held a resentencing hearing, orally pronounced that payment was to be made to the Texas Attorney General Crime Victim Compensation's Office, and lowered the amount of restitution to \$16,966.22. The trial court also signed a written judgment memorializing the lower amount of restitution, the correct payee for restitution, and an address where restitution payments were to be made. 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 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* the judgment of the trial court. See TEX. R. APP. P. 43.2(b).

¹ See generally *McGill v. State*, No. 06-10-00184-CR, 2011 WL 3689357 (Tex. App.—Texarkana Aug. 24, 2011, no pet.) (mem. op., not designated for publication).

² 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.

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 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**

AUGUST 31, 2012

NO. 12-11-00387-CR

ANITA RENEE MCGILL,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th Judicial District Court
of Smith County, Texas. (Tr.Ct.No. 114-0305-10)

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 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.