

**NOS. 12-12-00009-CR
12-12-00010-CR**

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>PAMELA GAIL ZYTA, APPELLANT</i>	§	<i>APPEALS FROM THE 114TH</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***

Pamela Gail Zyta appeals her convictions for delivery of a controlled substance (cause number 12-12-00009-CR) and possession of marijuana (cause number 12-12-00010-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). Thereafter, Appellant filed a letter responding to counsel's brief. We affirm.

BACKGROUND

On August 19, 2011, a Smith County grand jury returned two indictments against Appellant, alleging delivery of a controlled substance, namely cocaine, in an amount of 400 grams or more, and possession of marijuana in an amount of 2,000 pounds or less but more than 50 pounds.¹ Appellant pleaded guilty to both offenses. After a hearing on sentencing, the trial court assessed punishment at life imprisonment for the delivery of a controlled substance charge and

¹ See TEX. HEALTH & SAFETY CODE ANN. §§ 481.112(f), 481.121(b)(5) (West 2010).

twenty years of imprisonment for the possession of marijuana charge. The trial court ordered the sentences to run concurrently. No fine was assessed in either case. 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. 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). In her letter, Appellant contends that her trial attorney told her she would be placed on community supervision for ten years if she pleaded guilty; otherwise, she "was looking at [five to twenty] years" of imprisonment. By these contentions, Appellant implicitly asserts that these representations induced her to plead guilty.

We have considered counsel's brief and Appellant's letter and have conducted our own independent review of the record.² 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. See *In re Schulman*, 252 S.W.3d at 408-09.

² We see nothing in the record to support Appellant's contention that she pleaded guilty after being promised she would be placed on community supervision. However, we note that the trial court admonished Appellant that the maximum monetary punishment for the offense of delivery of a controlled substance was a fine not to exceed \$10,000, when in actuality, the maximum monetary punishment was a fine not to exceed \$250,000. See TEX. HEALTH & SAFETY CODE ANN. § 481.112(f). A trial court is required to admonish a defendant of the range of punishment attached to the offense. See TEX. CODE CRIM. PROC. ANN. art. 26.13(a) (West Supp. 2012). When the record shows that the trial court delivered an incorrect admonishment regarding the range of punishment, and the actual sentence lies within both the actual and misstated maximum, substantial compliance is attained. See *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998). Here, Appellant was not assessed a fine in either case. Therefore, her actual sentence was within both the actual and the misstated maximum fine. See *Garner v. State*, 300 S.W.3d 763, 764 (when appellate court finds no issues of arguable merit, it may explain why issues have no arguable merit).

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 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 October 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**

OCTOBER 31, 2012

**NOS. 12-12-00009-CR
12-12-00010-CR**

PAMELA GAIL ZYTA,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeals from the 114th Judicial District Court
of Smith County, Texas. (Tr.Ct.Nos. 114-1084-11; 114-1085-11)

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 to withdraw is **granted**, the judgments 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.