

**NOS. 12-14-00234-CR
12-14-00235-CR
12-14-00236-CR**

**IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS**

<i>JAMES CHRISTOPHER FETZER, APPELLANT</i>	§	<i>APPEALS FROM THE 217TH</i>
<i>V.</i>	§	<i>JUDICIAL DISTRICT COURT</i>
<i>THE STATE OF TEXAS, APPELLEE</i>	§	<i>ANGELINA COUNTY, TEXAS</i>

***MEMORANDUM OPINION
PER CURIAM***

James Christopher Fetzer appeals his convictions for aggravated assault with a deadly weapon, possession of a controlled substance, and assault family violence by strangulation. 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 modify and affirm as modified.

BACKGROUND

An Angelina County grand jury returned two indictments against Appellant for the offenses of aggravated assault with a deadly weapon (appellate cause number 12-14-00234-CR) and assault family violence by strangulation (appellate cause number 12-14-00236-CR). Appellant was later charged by information with the offense of possession of a controlled substance, namely, methamphetamine, in an amount greater than one gram but less than four grams (appellate cause number 12-14-00235-CR). Appellant pleaded guilty to each of the offenses and “true” to the enhancement paragraph alleged in the assault cases.

After a presentence investigation was completed, the trial court conducted a hearing on punishment. The trial court found Appellant “guilty” of each offense, and found the enhancement paragraph in the assault cases “true.” In cause number 12-14-00234-CR, the trial court sentenced Appellant to twenty years of imprisonment. In each of the remaining cause numbers, the trial court sentenced Appellant to ten years of imprisonment. The sentences were ordered to run concurrently.

ANALYSIS PURSUANT TO *ANDERS V. CALIFORNIA*

Appellant’s counsel has filed a brief in compliance with *Anders* and *Gainous*. Counsel states that he has reviewed the appellate record and that he is unable to find any reversible error or jurisdictional defects. 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 why counsel is unable to present any arguable issues for appeal.¹ See *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *Gainous*, 436 S.W.2d at 138; see also *Penson v. Ohio*, 488 U.S. 75, 80, 109 S. Ct. 346, 350, 102 L. Ed. 2d 300 (1988). We have reviewed the record for reversible error and have found none. See *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005).

We note, however, that the trial court’s “corrected” judgment in cause number 12-14-00234-CR incorrectly reflects a plea of “true” to the second enhancement paragraph when there was no second enhancement paragraph alleged. The corrected judgment also reflects “N/A” as the finding on the first enhancement paragraph. We have authority to modify a judgment to speak the truth when we have the necessary information before us to do so. See TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref’d). Appellant pleaded “true” to the first enhancement paragraph. Likewise, the trial court found the first enhancement paragraph to be “true.” Therefore, the trial court’s judgment should be modified to reflect that the trial court found the first enhancement paragraph to be “true” and that Appellant’s plea to the second enhancement paragraph is “N/A.”

¹ Counsel states in his motion to withdraw that he provided Appellant with a copy of his brief. Appellant was given time to file his own brief in this cause. The time for filing such brief has expired, and we have received no pro se brief.

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) (en banc). We agree with Appellant's counsel that the appeal is wholly frivolous. Accordingly, his motion for leave to withdraw is **granted** in each case. We **affirm** the trial court's judgment in cause numbers 12-14-00235-CR and 12-14-00236-CR. We **modify** the trial court's judgment in cause number 12-14-00234-CR to reflect that the trial court found the first enhancement paragraph "true," and Appellant's plea to the second enhancement paragraph is "N/A." We **affirm** the judgment as **modified**. *See* TEX. R. APP. P. 43.2(b); *Bray v. State*, 179 S.W.3d 725, 726 (Tex. App.—Fort Worth 2005, no pet.) (en banc) (holding that appellate court has authority to reform judgment in *Anders* appeal and affirm judgment as reformed).

Appellant's 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 review of this case by the Texas Court of Criminal Appeals, he must either retain an attorney to file a petition for discretionary review on his behalf or he must file a petition for discretionary review pro se. Any petition for discretionary review must be filed within thirty days after either the date of this court's judgment or the date the last timely motion for rehearing was overruled by this court. *See* TEX. R. APP. P. 68.2(a). Any petition for discretionary review must be filed with 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 Texas Rule of Appellate Procedure 68.4. *See Schulman*, 252 S.W.3d at 408 n.22.

Opinion delivered June 10, 2015.

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

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 10, 2015

NO. 12-14-00234-CR

JAMES CHRISTOPHER FETZER,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 217th District Court
of Angelina County, Texas (Tr.Ct.No. 2013-0378)

THIS CAUSE came on to be heard on the appellate record and the brief filed herein; and the same being inspected, it is the opinion of the Court that the trial court's judgment below should be **modified and, as modified, affirmed.**

It is therefore ORDERED, ADJUDGED and DECREED that the trial court's "corrected" judgment below be **modified** to reflect that the trial court found the first enhancement paragraph "true," and Appellant's plea to the second enhancement paragraph is "N/A;" **and as modified**, the trial court's judgment is **affirmed**; and that this decision be certified to the trial court below for observance.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.



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TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

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JAMES CHRISTOPHER FETZER,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 217th District Court
of Angelina County, Texas (Tr.Ct.No. 2014-0413)

THIS CAUSE came to be heard on the appellate record and brief 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 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., Hoyle, J. and Neeley, J.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 10, 2015

NO. 12-14-00236-CR

JAMES CHRISTOPHER FETZER,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 217th District Court
of Angelina County, Texas (Tr.Ct.No. 2013-0502)

THIS CAUSE came to be heard on the appellate record and brief 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 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., Hoyle, J. and Neeley, J.