

**NOS. 12-14-00349-CR
12-14-00354-CR**

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>RACHEL MICHELLE KIRKSEY, 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

Rachel Michelle Kirksey appeals her convictions for possession of a controlled substance and tampering with physical evidence. Appellant’s counsel filed a brief in 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

In July 2014, Appellant was indicted for possession of a controlled substance, a state jail felony as alleged in the indictment. In a separate case, Appellant was indicted for tampering with physical evidence, a third degree felony.

Appellant pleaded “guilty” pursuant to a negotiated plea agreement on both offenses. In accordance with the agreement, the trial court found Appellant guilty of the possession of a controlled substance charge, sentenced her to two years of confinement in a state jail facility, suspended her sentence, and placed her on community supervision for a period of five years. The trial court also found Appellant guilty of the tampering with physical evidence charge, sentenced her to imprisonment for a period of ten years, suspended her sentence, and placed her on community supervision for a period of five years.

In September 2014, the State filed an application in each case to revoke Appellant's community supervision.¹ In the amended applications, the State alleged that Appellant failed to pay various fees required as conditions of her community supervision, and also that she failed to report to her community supervision officer on several occasions. Appellant pleaded "true" to all the allegations in the State's applications.

Accordingly, the trial court sentenced Appellant to twelve months of confinement in a state jail facility for the possession of a controlled substance charge, and five years of imprisonment for the tampering with physical evidence charge. The trial court ordered that the sentences be served concurrently. This appeal followed.

ANALYSIS PURSUANT TO *ANDERS V. CALIFORNIA*

Appellant's counsel filed a brief in compliance with *Anders v. California* and *Gainous v. State*. Appellant's counsel states that he has diligently reviewed the appellate record and is of the opinion that the record reflects no reversible error and that there is no error upon which an appeal can be predicated. He further relates that he is well acquainted with the facts in this case. In compliance with *Anders*, *Gainous*, and *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. [Panel Op.] 1978), Appellant's brief presents a chronological summation of the procedural history of the case and further states that Appellant's counsel is unable to raise any arguable issues for appeal.² We have likewise 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).

CONCLUSION

As required by *Stafford v. State*, 813 S.W.2d 503 (Tex. Crim. App. 1991), Appellant's counsel has moved for leave to withdraw. See also *In re Schulman*, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008) (orig. proceeding). 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 the trial court's judgment is **affirmed**. See TEX. R. APP. P. 43.2.

¹ The State filed amended applications to revoke Appellant's community supervision in October 2014.

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 her own brief in this cause. The time for filing such a brief has expired and no pro se brief has been filed.

As a result of our disposition of this case, 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 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 review of this case by the Texas Court of Criminal Appeals, she must either retain an attorney to file a petition for discretionary review on her behalf or she must file a petition for discretionary review pro se. Any petition for discretionary review must be filed within thirty days from 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. 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 In re Schulman*, 252 S.W.3d at 408 n.22.

BRIAN HOYLE
Justice

Opinion delivered July 22, 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

JULY 22, 2015

NO. 12-14-00349-CR

RACHEL MICHELLE KIRKSEY,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-0777-14)

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.

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



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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.

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