

NO. 12-15-00099-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

DARRIAN DEWAYNE JOHNSON JR., § *APPEAL FROM THE 2ND*
APPELLANT

V. § *JUDICIAL DISTRICT COURT*

THE STATE OF TEXAS,
APPELLEE § *CHEROKEE COUNTY, TEXAS*

MEMORANDUM OPINION
PER CURIAM

Darrian DeWayne Johnson Jr. appeals his conviction for possession of a controlled substance. 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

Appellant was charged by indictment with the offense of possession of a controlled substance, namely, cocaine, in an amount of less than one gram, a state jail felony. Appellant pleaded “guilty” to the offense charged in the indictment. Appellant and his counsel signed various documents in connection with his guilty plea, including a stipulation of evidence and judicial confession in which Appellant swore, and judicially confessed, to the offense alleged in the indictment, and admitted that he committed each and every element alleged in the indictment and that he was guilty as charged. The trial court accepted Appellant’s plea, found the evidence was sufficient to support a finding of Appellant’s guilt, deferred further proceedings without entering an adjudication of guilt, and ordered that Appellant be placed on deferred adjudication community supervision for four years.

Later, the State filed a motion to adjudicate, alleging that Appellant had violated the terms of his community supervision. At the hearing, the State abandoned paragraph 15 of its motion. Appellant pleaded “not true” to the allegations in paragraphs 11, 12, 13, 14, 22, 24, 29, and 30, and “true” to the remaining paragraphs. After a hearing, the trial court found the allegations to be “true,” granted the State’s motion, adjudged Appellant guilty of possession of a controlled substances, namely, cocaine, in an amount of one gram or less, and assessed his punishment at two years in a state jail facility. This appeal followed.

ANALYSIS PURSUANT TO *ANDERS V. CALIFORNIA*

Appellant’s counsel filed a brief in compliance with *Anders* and *Gainous*, stating 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. From our review of counsel’s brief, it is apparent that counsel is well acquainted with the facts in this case. In compliance with *Anders*, *Gainous*, and *High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978), counsel’s briefs present a chronological summation of the procedural history of the case, and further states that counsel is unable to raise any arguable issues for appeal. We have reviewed the record for reversible error and have found none.¹ 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 in the case. 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 agree with Appellant’s counsel that the appeal is wholly frivolous. Accordingly, we **grant** counsel’s motion for leave to withdraw, and **affirm** the trial court’s judgment. See 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

¹ Counsel for Appellant certified that he provided Appellant with a copy of his brief and informed Appellant that he had the right to file his own brief. Appellant was given time to file his own brief, but the time for filing such brief has expired and we have received no pro se brief.

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 from the date of either this opinion or the day 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. 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 20, 2013.

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 20, 2016

NO. 12-15-00099-CR

DARRIAN DEWAYNE JOHNSON JR.,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 2nd District Court
of Cherokee County, Texas (Tr.Ct.No. 18851)

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.