

NO. 12-16-00022-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***TREVOR XAVIER SCHENDEL,
APPELLANT***

§ *APPEAL FROM THE 7TH*

V.

§ *JUDICIAL DISTRICT COURT*

***THE STATE OF TEXAS,
APPELLEE***

§ *SMITH COUNTY, TEXAS*

***MEMORANDUM OPINION
PER CURIAM***

Trevor Xavier Schendel appeals his conviction for driving while intoxicated. 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 indicted for the offense of driving while intoxicated (DWI), a third degree felony as alleged due to prior DWI convictions.¹ Appellant entered a plea of “guilty” as part of a negotiated plea agreement. In March 2014, the trial court accepted Appellant’s plea and found him guilty of the offense. The trial court sentenced Appellant to ten years of imprisonment, but suspended his sentence and placed him on community supervision for ten years.

In December 2014, the State filed an application to revoke Appellant’s community supervision. The application alleged that Appellant failed to comply with the terms of his community supervision in that he committed another DWI in September 2014, possessed and drank alcohol, and operated a motor vehicle without a deep lung breath analysis mechanism. Appellant pleaded “not true” to the alleged violations of his community supervision. After a

¹ See TEX. PENAL CODE ANN. §§ 49.04, 49.09(b)(2) (West Supp. 2016).

hearing, the trial court found the allegations in the State's application to be true, revoked Appellant's community supervision, and sentenced him to ten years of imprisonment. 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 brief presents a chronological summation of the procedural history of the case, and further states that counsel is unable to raise any arguable issues for appeal.² We have considered counsel's brief and conducted our own independent review of the appellate record. We found no reversible error. See *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). Accordingly, we conclude the appeal is wholly frivolous.

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 *granted*, and the trial court's judgment is *affirmed*. See TEX. R. APP. P. 43.2.

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 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

² Counsel for Appellant has certified that he provided Appellant with a copy of this brief. Appellant was given time to file his own brief in this cause. The time for filing such a brief has expired, and we have not received a pro se brief.

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 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.

Opinion delivered September 7, 2016.

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

SEPTEMBER 7, 2016

NO. 12-16-00022-CR

TREVOR XAVIER SCHENDEL,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 7th District Court
of Smith County, Texas (Tr.Ct.No. 007-1483-15)

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.