

NO. 12-16-00277-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***CHARLES DALE STEGALL,
APPELLANT***

§ ***APPEAL FROM THE 173RD***

V.

§ ***JUDICIAL DISTRICT COURT***

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

§ ***HENDERSON COUNTY, TEXAS***

***MEMORANDUM OPINION
PER CURIAM***

Charles Dale Stegall appeals his convictions for aggravated sexual assault of a child. 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 modify and affirm as modified.

BACKGROUND

Appellant was charged by indictment with continuous sexual abuse of a child and five counts of aggravated sexual assault of a child. The State agreed to dismiss the continuous sexual abuse charge, and Appellant pleaded “guilty” to the remaining charges. After a hearing, the trial court assessed Appellant’s punishment at imprisonment for forty years in each case. 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 relates that he has diligently reviewed the record and found no nonfrivolous issue for our review. In compliance with *High v. State*, 573 S.W.2d 807, 812 (Tex.

Crim. App. [Panel Op.] 1978), counsel’s brief contains a thorough professional evaluation of the record demonstrating why there are no arguable grounds to be advanced.¹

We have considered counsel’s brief and conducted our own independent review of the record. *Id.* at 811. We have found no reversible error.

JUDGMENT MODIFICATION

In reviewing the record, we found an error in the written judgments. We have the authority to correct a trial court’s judgment to make the record speak the truth when we have the necessary data and information. *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref’d). In this case, the judgments state that Appellant’s punishment is “Four (40) years confinement in the Institutional Division, Texas Department of Criminal Justice[.]” The trial court orally pronounced Appellant’s punishment as imprisonment for forty years in each count. Having the necessary data and information to correct the trial court’s judgments to make the record speak the truth, we conclude that the judgments should be modified to reflect that Appellant’s punishment is “Forty (40) years confinement in the Institutional Division, Texas Department of Criminal Justice[.]” *See id.*

CONCLUSION

As required by *Anders* and *Stafford v. State*, 813 S.W.2d 503, 511 (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 carried the motion for consideration with the merits. Having done so, we agree with Appellant’s counsel that the appeal is wholly frivolous. Accordingly, we **grant** counsel’s motion for leave to withdraw. We **modify** each of the trial court’s judgments to reflect that Appellant’s punishment is imprisonment for forty years. We **affirm** the judgments as modified.

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.

¹ In compliance with *Kelly v. State*, Appellant’s counsel provided Appellant with a copy of the brief, notified Appellant of his motion to withdraw as counsel, informed Appellant of his right to file a pro se response, and took concrete measures to facilitate Appellant’s review of the appellate record. 436 S.W.3d 313, 319 (Tex. Crim. App. 2014). Appellant was given time to file his own brief. The time for filing such a brief has expired and no pro se brief has been filed.

Should Appellant wish to seek review of these cases 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 pro se petition for discretionary review. 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(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 Rule 68.4 of the Texas Rules of Appellate Procedure. See *In re Schulman*, 252 S.W.3d at 408 n.22.

Opinion delivered September 13, 2017.

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 13, 2017

NO. 12-16-00277-CR

CHARLES DALE STEGALL,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 173rd District Court
of Henderson County, Texas (Tr.Ct.No. CR15-1276-173)

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 judgments below should be **modified and, as modified, affirmed**.

It is therefore ORDERED, ADJUDGED and DECREED that the trial court's judgments below be **modified** to reflect that Appellant's punishment is imprisonment for forty years; **and as modified**, the trial court's judgments are **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.