

**NO. 12-17-00063-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

***STEVEN EDWARD RADZIKOWSKI,***  
***APPELLANT***

§ ***APPEAL FROM THE 87TH***

***V.***

§ ***JUDICIAL DISTRICT COURT***

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

§ ***ANDERSON COUNTY, TEXAS***

---

---

***MEMORANDUM OPINION***  
***PER CURIAM***

Steven Edward Radzikowski appeals his conviction for aggravated assault with a deadly weapon. 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 aggravated assault with a deadly weapon and pleaded “not guilty.” Appellant was found “guilty” by a jury of aggravated assault with a deadly weapon as charged in the indictment. Appellant pleaded “true” to one felony enhancement allegation, and the jury assessed his punishment at imprisonment for seventeen years and a \$10,000 fine. 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 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.<sup>1</sup>

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 judgment. 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 judgment states, “Fine: \$N/A.” However, the record indicates that the jury assessed a \$10,000 fine and the trial court included the \$10,000 fine in its oral pronouncement of sentence. Having the necessary data and information to correct the trial court’s judgment to make the record speak the truth, we conclude that the judgment should be modified to reflect that Appellant’s sentence includes a \$10,000 fine. *See Asberry*, 813 S.W.2d at 529.

### 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* the trial court’s judgment to include a \$10,000 fine and *affirm* the judgment 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. Should Appellant wish to seek review of these cases by the Texas Court of Criminal Appeals, he must

---

<sup>1</sup> 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.

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 19, 2018.

*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 19, 2018

NO. 12-17-00063-CR

**STEVEN EDWARD RADZIKOWSKI,**

Appellant

V.

**THE STATE OF TEXAS,**

Appellee

---

Appeal from the 87th District Court  
of Anderson County, Texas (Tr.Ct.No. 87CR-16-32859)

---

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

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below be **modified** to reflect that Appellant's sentence includes a \$10,000 fine; **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.