

NO. 12-17-00201-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***WILLIAM POTTER,
APPELLANT***

§ ***APPEAL FROM THE 402ND***

V.

§ ***JUDICIAL DISTRICT COURT***

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

§ ***WOOD COUNTY, TEXAS***

***MEMORANDUM OPINION
PER CURIAM***

William Potter appeals his conviction for evading arrest or detention in a vehicle. 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). Thereafter, Appellant filed a pro se brief. We affirm.

BACKGROUND

Appellant was charged by indictment with evading arrest or detention with a vehicle. The indictment further alleged that Appellant used a vehicle as a deadly weapon in the commission of the charged offense and had two prior felony convictions. Appellant pleaded “not guilty.” A jury found Appellant “guilty” as charged and further found that Appellant used a “deadly weapon” as charged. The matter proceeded to a trial on punishment.

At the punishment hearing, Appellant pleaded “true” to the enhancement allegations. Ultimately, the jury found the enhancement allegations to be “true,” and assessed Appellant’s punishment at imprisonment for fifty years. The trial court sentenced Appellant accordingly, and 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.¹

Thereafter, Appellant filed a pro se brief in which he raised the following issues: (1) his trial counsel failed to introduce evidence of a mental evaluation, which violated Appellant's constitutional rights and prejudiced his defense; (2) a conflict of interest arose between Appellant and his trial counsel, and his counsel's continued representation resulted in a violation of his constitutional rights; (3) his constitutional rights under the Fifth and Fourteenth Amendments were violated along with his rights under the Eighth Amendment against excessive bail; (4) his trial counsel failed to investigate his prior mental illness, which violated his constitutional rights and prejudiced his defense; (5) the indictment was defective because it failed to set forth a prior enhancement conviction; and (6) his fifty-year sentence amounts to cruel and unusual punishment. We 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 carried the motion for consideration with the merits. Having done so and finding no reversible error, Appellant's counsel's motion for leave to withdraw is hereby *granted* and the trial court's judgment is *affirmed*.

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. See *Kelly v. State*, 436 S.W.3d 313, 319 (Tex. Crim. App. 2014).

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 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 either this opinion or the last timely motion for rehearing that 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 May 31, 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

MAY 31, 2018

NO. 12-17-00201-CR

WILLIAM POTTER,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 402nd District Court
of Wood County, Texas (Tr.Ct.No. 23,223-2017)

THIS CAUSE came to be heard on the appellate record and briefs 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.