

NO. 12-18-00191-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***CORNELIUS A. BROWN,
APPELLANT***

§ *APPEAL FROM THE 114TH*

V.

§ *JUDICIAL DISTRICT COURT*

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

§ *SMITH COUNTY, TEXAS*

***MEMORANDUM OPINION
PER CURIAM***

Cornelius A. Brown appeals his conviction for aggravated robbery. 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 robbery.¹ He pleaded “not guilty,” and the matter proceeded to a jury trial.

At trial, the evidence showed that Appellant asked gas station attendant Abdul Kurbi about purchasing some CDs at a discounted rate. Kurbi said he would ask the owner and then assisted some other customers. Appellant walked around the store holding the CDs, took some T-shirts from a display, and exited without paying for the items. Kurbi followed Appellant to his vehicle and told him to return the items. Appellant kicked and hit Kurbi, who then grabbed Appellant. A passenger in Appellant’s vehicle wielded a knife at Kurbi. Then Kurbi released Appellant, and Appellant closed the car door on Kurbi’s hand. Kurbi told Appellant that he

¹ A first-degree felony. See TEX. PENAL CODE ANN. § 29.03(b) (West 2019).

would not call the police if he returned the merchandise. Appellant accompanied Kurbi back into the store and returned most of the items but refused to return two CDs, claiming they were his property.² Kurbi testified that his wrist was fractured during the incident and still caused him pain at the time of trial.

Ultimately, the jury found Appellant “guilty” as charged and assessed his punishment at imprisonment for twenty-seven years. 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 reviewed the record and found no reversible error or jurisdictional defects. In compliance with *High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. [Panel Op.] 1978), counsel’s brief contains a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced.³

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

JUDGMENT ERROR

In reviewing the record, we found an error in the written judgment. An appellate court may reform a trial court’s judgment when it has the necessary data and information. TEX. R. APP. P. 43.2(b); *Banks v. State*, 708 S.W.2d 460, 462 (Tex. Crim. App. 1986).

Here, the record shows that the jury could find in one of two ways that Appellant used a deadly weapon—either as the primary actor through his use of the car or car door, or as a party through his passenger’s use of the knife. *See* TEX. PENAL CODE ANN. §§ 1.07(a)(17) (West Supp. 2019), 7.02(a)(2) (West 2011). However, the judgment states, “Findings on Deadly Weapon: AFFIRMATIVE FINDING OF DEADLY WEAPON, TO-WIT: A MOTOR VEHICLE AND MOTOR VEHICLE DOOR.” Having the necessary data and information, we

² In the punishment phase, Appellant testified he only took one CD. He claimed that the CD contained his name, face, and music, and that he believed the store was selling it illegally.

³ In compliance with *Kelly v. State*, Appellant’s counsel provided him 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 expired and no pro se brief was filed.

conclude that the judgment should be *modified* to reflect that the deadly weapon involved was a motor vehicle, motor vehicle door, or knife. See TEX. R. APP. P. 43.2(b); *Banks*, 708 S.W.2d at 462.

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 reflect a deadly weapon finding of “motor vehicle, motor vehicle door, or knife,” 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 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 pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days from either the date of this opinion or the date that 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 July 15, 2020.

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 15, 2020

NO. 12-18-00191-CR

CORNELIUS A. BROWN,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-0335-18)

THIS CAUSE came to be heard on the appellate record and the brief filed herein, and the same being considered, because it is the opinion of this court that the judgment of the 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 the deadly weapon involved was a motor vehicle, motor vehicle door, or knife; in all other respects the judgment of the trial court is **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.