NO. 12-21-00104-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

JAMES AARON LANDERS, APPELLANT	*§*	*APPEAL FROM THE 2ND*
V.	*§*	*JUDICIAL DISTRICT COURT*
THE STATE OF TEXAS, APPELLEE	*§*	*CHEROKEE COUNTY, TEXAS*

MEMORANDUM OPINION
PER CURIAM

James Aaron Landers appeals his conviction for evading arrest or detention with a motor 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). We modify and affirm as modified.

BACKGROUND

Appellant was charged by indictment with evading arrest or detention with a motor vehicle by intentionally fleeing from a person he knew was a peace officer who was attempting lawfully to arrest or detain him, a third degree felony.[1] The indictment also included one enhancement paragraph. Appellant's counsel filed a motion for a competency examination, and the trial court appointed a physician to conduct an examination of Appellant's competency to stand trial. After a hearing and expert evaluation, the trial court found that Appellant was competent to stand trial.

Appellant pleaded "not guilty," and the case proceeded to a jury trial. Joe Herman Houghton, Jr., a patrol officer with the City of Alto at the time of the offense, testified that he

[1] *See* TEX. PENAL CODE ANN. § 38.04(a), (b)(2)(A) (West 2016).

responded to a call of a suspicious person at a residence outside the Alto city limits. Houghton pulled into the driveway and noticed that the vehicle described by the caller, a white Chevrolet extended cab pickup, was driving from the driveway towards the county road. He exited his patrol vehicle and attempted to contact the driver, yelling at the driver to stop and exit the vehicle. However, Houghton stated, there was no response from the driver whom he identified as Appellant. He told Appellant to stop multiple times, and requested that Appellant show his hands, but Appellant never responded and only showed his left hand. At that time, Houghton was approximately ten feet from Appellant with his firearm drawn. Houghton testified that Appellant reversed the vehicle and exited the property onto the roadway. Houghton jumped in his police vehicle and pursued Appellant.

Deputy Dakota David Hughes, a Cherokee County Sheriff's deputy, testified that he joined in the pursuit of Appellant when the chase proceeded north of Alto. During the pursuit, Hughes described Appellant's conduct as dangerous because it lasted over one hour and involved five different law enforcement agencies, including the Texas Department of Public Safety and Angelina County Sheriff's deputies. According to Hughes, Appellant drove his vehicle after one of his tires came off, moved back and forth between lanes, drove into a more congested city, exceeded the speed limit, and sped up and down. Hughes testified there were multiple attempts to deploy "spike strips" to deflate Appellant's tires to stop the vehicle, but Appellant maneuvered around the "spike strips." The dashcam videos from Houghton's and Hughes's patrol vehicles, which were both entered into evidence, support their testimony. Both Houghton and Hughes testified that they were lawfully attempting to arrest or detain Appellant. The jury found Appellant "guilty" of the offense of evading arrest or detention with a motor vehicle as alleged in the indictment.

At the punishment trial, Appellant pleaded "true" to the enhancement paragraph and elected for the trial court to determine punishment. A person who was driving on Highway 69 South stated that his truck was damaged when Appellant's vehicle lost a tire which subsequently struck his truck. Texas State Trooper Ricardo Antonio Segura, Jr. testified that on February 17, 2020, in Lufkin, Angelina County, Texas, Appellant was stopped and admitted to Segura that he took several medications, including Tylenol plus codeine and methamphetamine. Segura placed Appellant under arrest for driving while intoxicated and stated that Appellant gave "[scary] answers" and had "[scary] body movements." Satyajeet Lahiri, M.D. evaluated Appellant on

November 5, 2020. According to Dr. Lahiri, Appellant suffered from bipolar disorder, depressed, meaning that Appellant suffered from a mood disorder with cycles of depression and manic phases. Dr. Lahiri stated that Appellant also had a history of methamphetamine abuse and back injury. The pastor at Harbor Light Church in Lufkin, Texas, testified that Appellant expressed remorse and admitted that he ran from the police and evaded arrest because he was frightened. Appellant's mother and the pastor were not aware that Appellant had any mental health issues.

The trial court found the enhancement paragraph to be "true," adjudged Appellant guilty of the offense of evading arrest with a motor vehicle, and assessed Appellant's punishment at twelve years of imprisonment, along with court costs and restitution.[2] This appeal followed.

ANALYSIS PURSUANT TO *ANDERS V. CALIFORNIA*

Appellant's counsel filed a brief in compliance with ***Anders*** and ***Gainous***, stating 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. 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.[3] We have 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).

JUDGMENT

In reviewing the record, we found an error in the date of the offense in the Judgment of Conviction by Jury. We have the authority to reform a judgment in an ***Anders*** appeal and affirm

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[2] *See* ***id***. § 12.42(a) (West 2019). If it is shown on the trial of a third degree felony that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a second degree felony. *See* ***id.*** An individual adjudged guilty of a second degree felony shall be punished by imprisonment for any term of not more than twenty years or less than two years and, in addition, a fine not to exceed $10,000.00. *See* ***id.*** § 12.33 (West 2019).

[3] 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). Appellant was given time to file his own brief. The time for filing such brief has expired and no pro se brief has been filed.

the judgment as reformed. *See* TEX. R. APP. P. 43.2(b); ***Bray v. State***, 179 S.W.3d 725, 726 (Tex. App.—Fort Worth 2005, no pet.) (en banc). In this case, the indictment alleged that the date of the offense was March 21, 2020. Appellant pleaded "not guilty" to a date of offense of March 21, 2020, and Officer Houghton testified that he responded to a call on March 21, 2020 during which the offense involving Appellant occurred. However, the Judgment of Conviction states the date of the offense as March 21, 2021.

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). Because we have the necessary data and information to correct the date of the offense in this case, we conclude that the Judgment should be modified to reflect that the date of the offense is March 21, 2020. *See* ***id***.; TEX. R. APP. P. 43.2(b).

CONCLUSION

As required by ***Stafford v. State***, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991), Appellant's counsel 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***. We ***modify*** the trial court's judgment to reflect that the date of the offense is March 21, 2020 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***, 22 S.W.3d at 411 n.35. Should Appellant wish to seek further review of this case by the Texas Court of Criminal Appeals, he must either retain an attorney to file a petition for discretionary review or he must file a pro se petition for discretionary review. *See* ***In re Schulman***, 22 S.W.3d at 408 n. 22. Any petition for discretionary review must be filed within thirty days from the date of either this opinion, or if a motion for rehearing is filed, the date that the last timely motion for rehearing is 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. Any petition for discretionary review should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 68.4; ***In re Schulman***, 22 S.W.3d at 408 n. 22.

Opinion delivered May 11, 2022.
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 11, 2022

NO. 12-21-00104-CR

JAMES AARON LANDERS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 2nd District Court

of Cherokee County, Texas (Tr.Ct.No. 21514)

THIS CAUSE came to be heard on the appellate record and the brief filed herein, and the same being considered, 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 date of the offense is March 21, 2020; 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.