

NO. 12-22-00136-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***ARLENA SUTTON,
APPELLANT***

§ *APPEAL FROM THE 114TH*

V.

§ *JUDICIAL DISTRICT COURT*

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

§ *SMITH COUNTY, TEXAS*

***MEMORANDUM OPINION
PER CURIAM***

Arlena Sutton appeals her conviction for possession of a controlled substance. 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 letter we construe as a pro se brief. We affirm.

BACKGROUND

Appellant was indicted for possession of methamphetamine in an amount of one gram or more, but less than four grams, a third-degree felony as alleged in the indictment.¹ The State offered Appellant a plea deal of four years of imprisonment in exchange for her guilty plea. Appellant initially declined the offer and defense counsel made a motion to suppress evidence. Consequently, the State withdrew its plea offer.

However, Appellant ultimately decided to plead “guilty” to the offense and the State reoffered Appellant a second plea deal for three years of imprisonment, which she accepted. Appellant and her counsel signed several documents, including a stipulation of evidence establishing all the elements of the offense, an agreement to stipulate testimony, a waiver of jury

¹ See TEX. HEALTH & SAFETY CODE ANN. § 481.115(a), (c) (West Supp. 2022).

trial, an acknowledgement of admonishments, and a waiver of presentence investigation and report.

After admonishing Appellant and determining that her plea was knowingly, freely, and voluntarily given, the trial court accepted the plea. As part of the plea agreement, the trial court considered an unadjudicated offense in assessing her punishment and sentenced her to three years of imprisonment in accordance with the agreement.² 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 she has 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. She further relates that she 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.³

Thereafter, Appellant filed a letter we construe as a pro se brief in which she challenged the legality of the underlying search and alleges that she received ineffective assistance of counsel at trial and on appeal. We reviewed the record for reversible error and 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, we **grant** Appellant's counsel's motion for leave to withdraw and **affirm** the trial court's judgment.

² See TEX. PENAL CODE ANN. § 12.45 (West 2019).

³ In compliance with *Kelly v. State*, Appellant's counsel provided Appellant with a copy of the brief, notified Appellant of her motion to withdraw as counsel, informed Appellant of her 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 her of her 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, she must either retain an attorney to file a petition for discretionary review on her behalf or she 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 November 30, 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

NOVEMBER 30, 2022

NO. 12-22-00136-CR

ARLENA SUTTON,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1706-21)

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.