

Affirmed and Opinion filed January 4, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00592-CR

ELIGAH EMEAL YOUNG, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 726,333**

OPINION

Appellant entered a plea of guilty, without an agreed recommendation on punishment from the State, to the felony offense of felon in possession of a weapon, enhanced with two prior felony convictions. Following the return of a pre-sentence investigation report, the court deferred the adjudication of guilt, placed appellant on probation for ten years, and assessed a fine of one thousand dollars. The State subsequently filed a motion to adjudicate guilt and an amended motion to adjudicate guilt. Appellant entered a plea of true to the allegations in the State's amended motion. The court adjudicated appellant's guilt and assessed punishment pursuant to a plea bargain agreement at confinement for thirty years in the

Institutional Division of the Texas Department of Criminal Justice.

Appellant's appointed counsel filed a motion to withdraw from representation of appellant along with a supporting brief in which he concludes that the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978).

A copy of counsel's brief was delivered to appellant. Appellant was advised of the right to examine the appellate record and to file a *pro se* response. Appellant has filed a *pro se* response alleging two grounds of error. Appellant first argues that the trial court denied him the effective assistance of counsel by refusing to allow appellant to discharge his retained counsel and by refusing to appoint new counsel to represent appellant at the adjudication hearing. Secondly, appellant contends that the court erred by allowing the State to file *ex parte* a motion to adjudicate guilt and an amended motion to adjudicate guilt, without affording appellant the opportunity to participate in the decision to allow the motions to be filed. We find appellant's claims present no arguable grounds for appeal and affirm the judgment of the trial court.

Appellant's complaints attack the trial court's determination to proceed with adjudication of guilt. The trial court's decision to proceed with an adjudication of guilt is one of absolute discretion and is not reviewable. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5(b) (Vernon Supp. 2000); *Phynes v. State*, 828 S.W.2d 1, 2 (Tex. Crim. App. 1992) (holding that defendant could not appeal the determination to adjudicate guilt even though his counsel was not present at the adjudication hearing); *Cooper v. State*, 2 S.W.3d 500, 504 (Tex. App.—Texarkana 1999, pet. ref'd). An appellant whose deferred adjudication probation has been revoked and who has been adjudicated guilty of the original charge may not raise on appeal contentions of error in the adjudication process. *See Connolly v. State*, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999). No arguable grounds of error are presented in appellant's *pro se* response.

Accordingly, the judgment of the trial court is affirmed and the motion to withdraw is granted.

PER CURIAM

Judgment rendered and Opinion filed January 4, 2001.

Panel consists of Chief Justice Murphy and Justices Amidei and Hudson.

Do Not Publish — TEX. R. APP. P. 47.3(b).