

Affirmed and Opinion filed April 12, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00876-CR

JAMES MITCHELL WILEY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 722,563**

O P I N I O N

Appellant pled no contest to the felony offense of aggravated robbery, without an agreed recommendation on punishment from the State. Following the return of a pre-sentence investigation report, the court deferred adjudication of guilt, placed appellant on probation for eight years, and assessed a fine of five hundred dollars. Subsequently, the State filed a motion to adjudicate guilt. Appellant entered a plea of true to the State's allegations, without an agreed recommendation from the State on punishment. The court adjudicated appellant's guilt, assessed punishment at confinement in the Institutional Division of the Texas Department of

Criminal Justice for twenty years, and assessed a fine of four hundred dollars.

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). In his *Anders* brief, counsel raises, then rejects as frivolous, a claim that appellant's original plea was involuntary.

Any complaint appellant may have had about the original plea proceeding, including voluntariness of his plea, should have been made when deferred adjudication community supervision was first imposed. *See Manuel v. State*, 994 S.W.2d 658, 662 (Tex. Crim. App. 1999); *Daniels v. State*, 30 S.W.3d 407, 408 (Tex. Crim. App. 2000); *Hanson v. State*, 11 S.W.3d 285, 287-288 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). Because appellant failed to raise the issue of voluntariness of his plea during the thirty day time limit, he forfeited his right to appeal this issue. *See Manuel*, 994 S.W.2d at 658. Similarly, any complaints appellant may have attacking the trial court's determination to proceed with an adjudication of guilt may not be raised on appeal. 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); *Connolly v. State*, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999).

We have carefully reviewed the record and counsel's brief and agree that the appeal is wholly frivolous and without merit. Further, we find no reversible error in the record.

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. As of this date, no *pro se* response has been filed.

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

granted.

PER CURIAM

Judgment rendered and Opinion filed April 12, 2001.

Panel consists of Justices Anderson, Hudson and Seymore.

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