Affirmed and Opinion filed February 3, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00116-CR

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JOCELYN BRIDGATTE MCGRUDER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 659,913

O P I N I O N

Appellant entered a plea of guilty, without an agreed recommendation, to the offense of murder. Upon the return of a pre-sentence investigation report, the court deferred adjudication of guilt and placed appellant on community supervision for ten years. Subsequently, the court granted the State's motion to adjudicate guilt, finding that appellant had violated the terms of her community supervision probation by failing to report and committing the offense of assault. The court sentenced appellant to incarceration 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).

In his effort to comply with the requirements of *Anders*, appellate counsel raises a single potential point of error which might arguably support the appeal. Counsel questions whether the trial judge should have *sua sponte* withdrawn appellant's plea of guilty when appellant stated during the original plea proceeding that the killing was an accident and was committed in self-defense. We agree with appellate counsel's determination that such a claim is without merit.

A defendant placed on deferred adjudication community supervision may raise issues relating to the original plea proceeding only in appeals taken when deferred community supervision is first imposed. *See Manuel v. State,* 994 S.W.2d 658, 661 (Tex. Crim. App. 1999). Appellant could have appealed from the order placing her on deferred adjudication and could have argued at that time that the trial judge should have withdrawn her guilty plea following her testimony at the original sentencing hearing. *See id.* at 662. Her failure to do so precludes us from now reaching the merits of such a claim. *See id.*

Further, a trial court is not required to withdraw a guilty plea *sua sponte* and enter a plea of not guilty for a defendant when a defendant enters a plea of guilty before the court after waiving a jury, even if evidence is adduced that either makes the defendant's innocence evident or reasonably and fairly raises an issue as to guilt. *See Moon v. State,* 572 S.W.2d 681, 682 (Tex. Crim. App. 1978); *Graves v. State,* 803 S.W.2d 342, 346 (Tex. App.—Houston [14th Dist.] 1990, pet. ref'd). As trier of fact, the trial court may decide the fact issue by finding the defendant guilty or not guilty as it believes the facts require without withdrawing a guilty plea.

See id.; Sommer v. State, 574 S.W.2d 548, 549 (Tex. Crim. App. 1978). Thus, we agree with appellate counsel that no arguable error is shown by the trial court's failure to withdraw appellant's plea.

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, appellant has not responded.

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.

Accordingly, the judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed February 3, 2000.
Panel consists of Justices Yates, Fowler, and Edelman.
Do Not Publish — TEX. R. APP. P. 47.3(b).