TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00467-CR

Maria Miranda-Aguirre, Appellant

v.

The State of Texas, Appellee

FROM THE 167TH DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-DC-19-904016,
THE HONORABLE P. DAVID WAHLBERG, JUDGE PRESIDING

MEMORANDUM OPINION

Appellant Maria Miranda-Aguirre was convicted by a jury of two counts of trafficking of a child, *see* Tex. Penal Code § 20A.02(a)(7)(B), (D), and one count of indecency with a child by sexual contact, *see id.* § 21.11(a)(1), for her conduct relating to the sexual abuse of her best friend's eleven-year-old daughter. Appellant elected to have the trial court decide her punishment, *see* Tex. Code Crim. Proc. art. 37.07(2)(b), and the trial judge assessed her punishment at confinement in the Texas Department of Criminal Justice for twelve years for each of the trafficking offenses, *see* Tex. Penal Code §§ 12.32; 20A.02(b)(1), and for six years for the indecency offense, *see id.* §§ 12.33; 21.11(d).

Appellant's court-appointed attorney has filed a motion to withdraw supported by a brief concluding that the appeal is frivolous and without merit. The brief meets the requirements of *Anders v. California* by presenting a professional evaluation of the record

demonstrating why there are no arguable grounds to be advanced. *See Anders v. California*, 386 U.S. 738, 744 (1967); *Garner v. State*, 300 S.W.3d 763, 766 (Tex. Crim. App. 2009); *see also Penson v. Ohio*, 488 U.S. 75, 81–82 (1988).

Appellant's counsel has filed a letter with this Court indicating that he sent copies of the motion and brief to appellant, advised appellant of her right to examine the appellate record and file a pro se response, and provided a motion to assist appellant in obtaining the record. *See Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014); *see also Anders*, 386 U.S. at 744. Appellant did not file a motion requesting access to the record, and, to date, has not filed a pro se response or requested an extension of time to file a response.

We have conducted an independent review of the record—including the record of the trial proceedings below and appellate counsel's brief—and find no reversible error. *See Anders*, 386 U.S. at 744; *Garner*, 300 S.W.3d at 766; *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). We agree with counsel that the record presents no arguably meritorious grounds for review and the appeal is frivolous. Counsel's motion to withdraw is granted.[1] On review of the record, however, we observe that the written judgments of conviction in this case contain clerical error.

[1] The letter filed by appointed counsel reflects that he advised appellant of her right to seek discretionary review pro se should this Court declare her appeal frivolous. In addition, appellant was informed of her right to file a pro se petition for discretionary review upon execution of the *Trial Court's Certification of Defendant's Right of Appeal*. Nevertheless, appointed counsel must comply with Rule 48.4 of the Texas Rules of Appellate Procedure, which mandates that counsel send appellant a copy of this Court's opinion and judgment along with notification of her right to file a pro se petition for discretionary review within five days after this opinion is handed down. *See* Tex. R. App. P. 48.4; *see In re Schulman*, 252 S.W.3d 403, 411 n.35 (Tex. Crim. App. 2008). The duty to send appellant a copy of this Court's decision is an informational one, not a representational one. *See In re Schulman*, 252 S.W.3d at 411 n.33. It is ministerial in nature, does not involve legal advice, and exists after this Court has granted counsel's motion to withdraw. *See id.*

First, all three judgements indicate that the jury assessed appellant's punishment. However, the record reflects that the trial court, not the jury, assessed appellant's punishment. Second, the judgment of conviction for indecency with a child by sexual contact states that the "Statute for Offense" is "PC 21.11(d)." This statutory provision establishes that the offense of indecency with a child by sexual contact is a second-degree felony. However, the applicable statutory provisions for the indecency offense for which appellant was convicted include section 21.11(a)(1) of the Penal Code, the statutory provision that defines the offense of indecency with a child as charged in this case.

This Court has authority to modify incorrect judgments when the necessary information is available to do so. *See* Tex. R. App. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993). Accordingly, we modify all three judgments of conviction to reflect that the punishment was assessed by the "Court." We further modify the trial court's judgment of conviction for indecency with a child by sexual contact to reflect that the "Statute for Offense" is "PC 21.11(a)(1), (d)." As so modified, the trial court's judgments of conviction are affirmed.

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Edward Smith, Justice

Before Justices Goodwin, Kelly, and Smith

Modified and, As Modified, Affirmed

Filed: May 29, 2020

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