In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-19-00149-CR

JAMES QUINONEZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 106th District Court
Garza County, Texas
Trial Court No. 17-2973; Honorable Reed Filley, Presiding

June 17, 2020

MEMORANDUM OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

Following an open plea of guilty, Appellant, James Quinonez, was convicted of aggravated sexual assault of a child, enhanced by two prior felonies.[1] He elected to have a jury assess his punishment. After evidence was presented, the jury found both

[1] TEX. PENAL CODE ANN. §§ 22.021(a)(1)(A)(i), 22.021(a)(2)(B), & 12.42(d) (West 2019). As enhanced, the offense was punishable by imprisonment for life, or for any term of not more than 99 years or less than 25 years.

enhancement allegations to be true and assessed punishment at confinement for life. In presenting this appeal, court-appointed counsel filed an *Anders*[2] brief in support of a motion to withdraw. We affirm Appellant's conviction as enhanced and grant counsel's motion to withdraw.

In support of his motion to withdraw, counsel certifies he has conducted a conscientious examination of the record, and in his opinion, it reflects no potentially plausible basis for reversal of Appellant's conviction. *Anders v. California*, 386 U.S. 738, 744-45, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967); *In re Schulman*, 252 S.W.3d 403, 406 (Tex. Crim. App. 2008). Counsel candidly discusses why, under the controlling authorities, the record supports that conclusion. *See High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. 1978). Counsel has demonstrated that he has complied with the requirements of *Anders* and *In re Schulman* by (1) providing a copy of the brief to Appellant, (2) notifying him of the right to file a *pro se* response if he desired to do so, and (3) informing him of the right to file a *pro se* petition for discretionary review. *In re Schulman*, 252 S.W.3d at 408.[3] By letter, this court granted Appellant an opportunity to exercise his right to file a response to counsel's brief, should he be so inclined. *Id.* at 409 n.23. Appellant did file a response in which he complains of his trial counsel's

[2] *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

[3] Notwithstanding that Appellant was informed of his right to file a *pro se* petition for discretionary review upon execution of the *Trial Court's Certification of Defendant's Right of Appeal*, Rule 48.4 of the Texas Rules of Appellate Procedure provides that counsel shall, within five days after this opinion is handed down, send Appellant a copy of the opinion and judgment together with notification of his right to file a *pro se* petition for discretionary review. *In re Schulman*, 252 S.W.3d at 408 n.22, 411 n.35. On April 17th, this court was notified that Appellant's counsel, Mark Skelton, had passed away. Accordingly, because the duty to send the client a copy of this court's decision is an informational one and does not involve legal advice, this court dispenses with the requirements of Rule 48.4 and *sua sponte* provides a copy of the opinion and judgment with a letter advising Appellant of the deadline in which to file a *pro se* petition for discretionary review in the Texas Court of Criminal Appeals.

ineffectiveness. The State notified this court it would not be responding to the *Anders* brief.

BACKGROUND

The record shows that Appellant is related to the victim's mother by marriage.[4] Prior to the offense, he was well known to the family and sometimes helped around the house. At the time of the offense, the victim was approximately eleven years old. According to the victim's testimony, during the evening on September 23, 2017, Appellant was in her home and she was in bed lying on her side. Appellant came into her room, turned her over, removed her pants and underwear, and inserted his finger into her "private part." The victim's mother returned from a neighbor's house and found Appellant in the victim's bedroom with his hand in the victim's "private area." She began screaming and hitting Appellant and physically kicked him out of the house.

The victim's mother reported the incident to law enforcement. The deputy who responded to the scene interviewed the victim and her mother. They both gave the same description of the suspect. The deputy located Appellant at his home a short time later, and despite Appellant's denials, the deputy arrested him for sexual assault of a child.

As suggested by one of the deputies, the victim was transported to the hospital for an exam. She was evaluated by a sexual assault nurse examiner. According to the nurse, there was trauma to the victim's vaginal area consistent with the victim's account of digital penetration by Appellant.

[4] Appellant is the mother's uncle and the victim also referred to him as her uncle.

Appellant was indicted for intentionally and knowingly causing the digital penetration of the sexual organ of the victim who was younger than fourteen years of age. He maintained his innocence and entered a plea of not guilty when the trial proceedings commenced. However, at the conclusion of *voir dire*, he changed his mind and entered a plea of guilty. The trial court admonished him and ascertained that his plea was freely and voluntarily made. At that point, Appellant proceeded to have the jury assess his punishment.

At the commencement of the punishment phase, Appellant pleaded not true to both enhancement allegations. Through a fingerprint expert, the State introduced evidence of two prior felony convictions—both for driving while intoxicated. The expert matched the fingerprints on the two prior judgments to Appellant and confirmed those judgments and Appellant's criminal history.

During her testimony, the victim's mother admitted that at the time of the incident, she was at a neighbor's house consuming methamphetamine.[5] She also testified that Appellant had inappropriately touched her too on more than one occasion when she was a child. She never disclosed the abuse until Child Protective Services was investigating the incident involving her daughter.[6]

[5] The victim's mother claimed she had stopped using methamphetamine eight months earlier.

[6] The victim's mother had a history with Child Protective Services and the victim's maternal grandmother had custody of the victim and her two brothers.

The victim's maternal grandmother, who was also her primary conservator, testified that following the assault, the victim was very quiet and did not open up until she was in counseling. Also, she was very emotional and became easily upset.

A social worker testified that she had been counseling the victim and opined that she was suffering from post-traumatic stress disorder from the sexual assault by a trusted family member. In the witness's opinion, the victim would need counseling for a very long time and would possibly experience "mental health disorders, especially depression and anxiety." Also, because the perpetrator was a family member, it exacerbated the trauma and would possibly cause the victim to feel guilt.

After the State rested, defense counsel conferred with Appellant. Any potential witnesses favorable to Appellant "respectfully declined to testify." The defense rested and the punishment charge conference proceeded. Both sides announced they had no objections to the charge. The jury was properly instructed and returned its verdict of confinement for life.

ANALYSIS

By the *Anders* brief, counsel comprehensively evaluates the underlying proceedings, including the indictment, *voir dire* proceedings, the evidence presented, trial counsel's performance, and the imposition of a life sentence, which was within the statutory range. Appellant's counsel now concludes that reversible error is not presented in the record.

When, as here, we have an *Anders* brief filed by counsel and a *pro se* response filed by an appellant, we have two choices. First, we may determine that the appeal is

wholly frivolous and issue an opinion explaining that we have reviewed the record and find no reversible error. *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005) (citing *Anders*, 386 U.S. at 744). Or, we may determine that arguable grounds for appeal exist and remand the cause to the trial court so that new counsel may be appointed to brief the issues. *Bledsoe*, 178 S.W.3d at 827 (citing *Stafford v. State*, 813 S.W.2d 503, 510 (Tex. Crim. App. 1991)).

We too have independently examined the record to determine whether there are any non-frivolous issues which might support the appeal. *See Penson v. Ohio*, 488 U.S. 75, 80, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); *In re Schulman*, 252 S.W.3d at 409; *Stafford*, 813 S.W.2d at 511. We have found no such issues. *See Gainous v. State*, 436 S.W.2d 137, 138 (Tex. Crim. App. 1969). After reviewing the record, counsel's brief, and the *pro se* response, we agree with counsel that there is no plausible basis for reversal of Appellant's conviction. *See Bledsoe*, 178 S.W.3d at 826-27. Accordingly, we affirm the trial court's judgment and grant counsel's motion to withdraw.

CONCLUSION

The trial court's judgment is affirmed.

Patrick A. Pirtle
Justice

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