

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00880-CR

Emmanuel Grear, Appellant

v.

The State of Texas, Appellee

**FROM THE 299TH DISTRICT COURT OF TRAVIS COUNTY,
NO. D-1-DC-15-203840, THE HONORABLE KAREN SAGE, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Emmanuel Grear was indicted for committing the first-degree felony offense of aggravated robbery and the second-degree felony offense of burglary of a habitation in 2015 involving the victim C.R. Under the terms of a negotiated plea in 2016, Grear pled guilty only to the lesser-included offense of second-degree robbery, the State waived the burglary-of-a-habitation count, and the district court placed Grear on deferred-adjudication community supervision for ten years.¹ See Tex. Penal Code § 29.02 (defining offense of robbery); Tex. Code Crim. Proc. art. 42A.101 (addressing deferred-adjudication community supervision).

¹ This appeal addresses Grear's adjudication for a robbery offense in trial court cause number D-1-DC-15-203840 and is distinct from his adjudication for a robbery offense in trial court cause number D-1-DC-15-204897, committed against a different victim, which was the subject of an earlier appeal to this Court. See *Grear v. State*, No. 03-18-00787-CR, 2019 Tex. App. LEXIS 9409, at *1 (Tex. App.—Austin Oct. 29, 2019, no pet.) (mem. op., not designated for publication).

The State subsequently filed a motion to adjudicate, alleging that Grear violated the terms and conditions of his community supervision, including by his use of tetrahydrocannabinol (THC), his failure to report to the supervision office on multiple dates, and his failure to submit a urine or breath specimen for testing on multiple dates. *See* Tex. Code Crim. Proc. art. 42A.751 (addressing detention and hearing after violation of community supervision). The district court revoked Grear's community supervision, adjudicated Grear's guilt for the second-degree robbery offense, and sentenced him to eighteen years' imprisonment. *See id.* art. 42A.755 (addressing revocation of community supervision); Tex. Penal Code § 12.33 (addressing punishment for second-degree felony offenses). Grear appealed the judgment adjudicating his guilt.

Grear'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*, 386 U.S. 738, 744 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See Penson v. Ohio*, 488 U.S. 75, 80 (1988); *High v. State*, 573 S.W.2d 807, 811-13 (Tex. Crim. App. 1978); *Currie v. State*, 516 S.W.2d 684, 684 (Tex. Crim. App. 1974); *Jackson v. State*, 485 S.W.2d 553, 553 (Tex. Crim. App. 1972); *Gainous v. State*, 436 S.W.2d 137, 138 (Tex. Crim. App. 1969). Grear's counsel states that he has provided Grear with copies of the motion to withdraw and brief, advised him of his right to examine the appellate record and to file a pro se brief, and provided him with a form motion for pro se access to the appellate record along with this Court's mailing address. *See Kelly v. State*, 436 S.W.3d 313, 319-21 (Tex. Crim. App. 2014); *see also Anders*, 386 U.S. at 744; *Garner v. State*, 300 S.W.3d 763, 766 (Tex. Crim. App. 2009). No pro se brief has been filed and no extension of time was requested.

We have reviewed the record 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 appeal is frivolous. Counsel’s motion to withdraw is granted.

However, the district court’s judgment adjudicating guilt contains a clerical error reflecting that Gear’s “Plea to Motion to Adjudicate” was “TRUE.” The record of the adjudication hearing shows that Gear pled “not true” to all the State’s allegations. We are authorized to modify incorrect judgments when we have the information necessary 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 the judgment adjudicating guilt to reflect that Gear’s “Plea to Motion to Adjudicate” was “NOT TRUE.”

As modified, we affirm the district court’s judgment adjudicating guilt.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Baker and Triana

Modified, and as Modified, Affirmed

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