TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00404-CR

Justin Wayne Norton, Appellant

v.

The State of Texas, Appellee

FROM THE 207TH DISTRICT COURT OF COMAL COUNTY
NO. CR2018-287, THE HONORABLE DIB WALDRIP, JUDGE PRESIDING

MEMORANDUM OPINION

Appellant Justin Wayne Norton was convicted by a jury of fraudulent possession of identifying information. *See* Tex. Penal Code § 32.51(b)(1), (c)(2). The jury found the enhancement allegations of the indictment to be true and, pursuant to the habitual offender punishment provision of the Penal Code, assessed appellant's punishment at confinement in the Texas Department of Criminal Justice for twenty-eight years. *See id.* § 12.42(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 certified to this Court that she sent copies of the motion and brief to appellant, advised appellant of his 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 requested access to the appellate record, and, although his request was untimely, this Court ordered the clerk of the trial court to provide the appellate record to appellant and provide written verification to this Court that the record was provided to appellant, which the clerk did. *See Kelly*, 436 S.W.3d at 321. After this Court granted two requests for extensions of time to file a response, appellant filed a pro se response. However, appellant did not identify any arguable grounds for appeal in his response.[1]

We have conducted an independent review of the record—including the record of the trial proceedings below, appellate counsel's brief, and appellant's pro se response—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.[2]

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[1] In his response, appellant challenges the sufficiency of the evidence, asserting that the evidence failed to show that he knew that the items of identifying information in his possession were "contraband" and failed to prove his liability as party. He also complains about error in the jury charge, contending that the trial court erred by including an instruction on party liability, by failing to include an instruction on the law of presumptions under Penal Code section 2.05 (in connection with the party instruction given), and by failing to include an instruction on voluntary possession under Penal Code section 6.01(b).

[2] Appointed counsel certified to this Court that he advised appellant of his right to seek discretionary review pro se should this Court declare his appeal frivolous. In addition, 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*. Nevertheless, appointed counsel

However, through our independent review of the record, we note that the trial court's written judgment of conviction contains non-reversible error. The judgment states that the "Statute for Offense" is "32.51(c)(2) / 12.42(d) PENAL CODE." Penal Code section 32.51(c)(2) establishes that the offense of fraudulent possession of identifying information is a third-degree felony "if the number of items obtained, possessed, transferred, or used is five or more but less than 10," which is the case here. However, the applicable statutory provision for the fraudulent possession for which appellant was convicted is section 32.51(b)(1) of the Penal Code, the statutory provision that defines the offense of fraudulent use or possession of identifying information 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 the judgment of conviction to reflect that the "Statute for Offense" is "32.51(b)(1), (c)(2) / 12.42(d) PENAL CODE." As modified, the trial court's judgment of conviction is affirmed.

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 his 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.*

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Melissa Goodwin, Justice

Before Justices Goodwin, Kelly, and Smith

Modified and, as Modified, Affirmed

Filed: July 14, 2020

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