AFFIRMED as MODIFIED and Opinion Filed June 24, 2021

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00852-CR

HECTOR MANUEL CARREON, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1711409-Q

MEMORANDUM OPINION

Before Justices Schenck, Reichek, and Carlyle
Opinion by Justice Reichek

In September 2017, Hector Manuel Carreon pleaded guilty to burglary of habitation and, pursuant to a plea bargain, was placed on four years' deferred adjudication community supervision. In January 2019, appellant was arrested on charges of assault family violence and injury to a child in connection with an incident involving his wife and son. The following month, the State filed an amended motion to revoke probation and proceed with an adjudication of guilt, alleging eleven community supervision violations that included the new charges.

At a hearing, appellant pleaded true to allegations that he tested positive for THC and that he failed to pay court costs and fines, complete his community services

hours as directed, and participate in a domestic violence treatment program (BIPP). He pleaded not true to allegations that he committed injury to a child and assault family violence and that he failed to report, pay his community service and urinalysis fees, submit to a urinalysis, and participate in marijuana intervention counseling. After hearing the evidence, the trial court made no finding on the injury to a child allegation or failure to pay a urinalysis fee, but found the remaining allegations to be true. The trial court adjudicated appellant guilty of burglary of a habitation and sentenced him to eight years in prison.

On appeal, appellant's attorney filed a brief in which he concluded the appeal is wholly frivolous and without merit. He has also filed an accompanying motion to withdraw as appointed counsel.

When an appellate court receives an *Anders* brief asserting no arguable grounds for appeal exist, we must determine that issue independently by conducting our own review of the record. *See Anders v. California*, 386 U.S. 738, 744 (1967) (emphasizing court, and not appointed counsel, determines whether case is "frivolous" after full examination of proceedings); *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991) (quoting *Anders*). If we conclude, after conducting an independent review, that "appellate counsel has exercised professional diligence in assaying the record for error" and agree the appeal is frivolous, we should grant counsel's motion to withdraw and affirm the trial court's judgment. *In re Schulman*,

252 S.W.3d 403, 409 (Tex. Crim. App. 2008) (orig. proceeding); *Meza v. State*, 206 S.W.3d 684, 689 (Tex. Crim. App. 2006).

The brief before us meets the requirements of *Anders*. It presents a professional evaluation of the record showing why, in effect, there were no arguable grounds to advance. *See High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. [Panel Op.] 1978). Appellant was provided a complete record and advised of his rights to file a pro se response. Despite receiving numerous extensions over a one-year period to file a response, he has not done so. *See Kelly v. State*, 436 S.W.3d 313, 319–21 (Tex. Crim. App. 2014) (stating appellant has right to file pro se response to *Anders* brief filed by counsel).

We have reviewed the record and counsel's brief. See *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005) (explaining appellate court's duty in *Anders* cases). We agree the appeal is frivolous and without merit, and we find nothing in the record that might arguably support the appeal.

In the State's response, although not an arguable issue, it requests that we correct errors in the judgment. Specifically, it asserts the judgment incorrectly states (1) there was a plea bargain with agreed terms, (2) the court's findings to the allegations of community supervision violation, and (3) the incident number on the judgment.

This Court has the power to modify an incorrect judgment to make the record speak the truth when we have the necessary information before us 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); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref'd). This rule applies in an appeal where counsel files an *Anders* brief and the judgment contains clerical errors. *See Ducharme v. State*, No. 05-18-00687-CR, 2019 WL 4875344, at *1 (Tex. App.—Dallas Oct. 3, 2019, no pet.) (mem. op.) (not designated for publication).

Here, we agree with the first two suggested corrections. As to the first, the judgment shows that the "Terms of Plea Bargain" were "8 YEARS TDCJ." The record, however, shows that there was no plea bargain and appellant entered an open plea of true to some violations without a recommendation on punishment.

As to the second, the judgment states: ". . . Defendant violated the conditions of community supervision, as set out in the State's **AMENDED** Motion to Adjudicate Guilt, as follows: B, H, L, Q – DEFT PLEAD TRUE – DEFT PLEAD NOT TRUE TO A, A, D, J, N, N, T." Although the judgment correctly recites appellant's pleas, it does not correctly state the trial court's findings. The record shows that the trial court made no findings on the first "A" allegation (felony injury to a child) or the first "N" allegation (failure to pay urinalysis fee) but found all other allegations to be true.

As to the third suggested correction, our review shows that the incident number on the Judgment Adjudicating Guilt is the same number as that contained in the Order of Deferred Adjudication. Although the State asserts a "tracking suffix"

should be added to reflect that the burglary offense is "based on the second charge arising out of the incident," our record does not contain information regarding the burglary offense. And even if we considered information in the indictment to be sufficient to support the State's assertion, the State has not explained why the absence of the suffix renders the incident number incorrect. Consequently, we deny the request to make this correction.

We modify the judgment to delete "8 YEARS TDCJ" under "Terms of Plea Bargain" and to accurately reflect the trial court's findings on the allegations of community supervision violations.

We grant counsel's motion to withdraw and affirm the trial court's judgment as modified.

/Amanda L. Reichek/
AMANDA L. REICHEK
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)
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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

HECTOR MANUEL CARREON, Appellant	On Appeal from the 204th Judicial District Court, Dallas County, Texas Trial Court Cause No. F17-11409-Q.
No. 05-19-00852-CR V.	Opinion delivered by Justice Reichek; Justices Schenck and Carlyle participating.
THE STATE OF TEXAS, Appellee	

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

(1) to delete "8 YEARS TDCJ" under "TERMS OF PLEA BARGAIN" and to state "NONE" and

(2) to state that "Defendant violated the conditions of community supervision, as set out in the State's Amended Motion to Adjudicate Guilt, as follows: A–second paragraph, B, D, H, J, L, N–second paragraph, Q, and T.

As **MODIFIED**, the judgment is **AFFIRMED**.

Judgment entered June 24, 2021