Affirmed and Opinion filed January 4, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-99-00958-CR

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JAMES CHARLES SMITH, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 177th District Court
Harris County, Texas
Trial Court Cause No. 791,172

O P I N I O N

Appellant entered a plea of guilty to the felony offense aggravated assault. Pursuant to a plea bargain agreement, appellant was placed on deferred adjudication community supervision for five years. Subsequently, the State filed a motion to adjudicate guilt. Upon appellant's plea of not true, the court found the allegations in the motion to adjudicate true, adjudicated appellant's guilt, and assessed punishment at confinement for sixteen years in the Institutional Division of the Texas Department of Criminal Justice.

Appellant's appointed counsel filed a motion to withdraw from representation of appellant along with a supporting brief in which he concludes that the appeal is wholly frivolous and without merit. The

brief meets the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978).

A copy of counsel's brief was delivered to appellant. Appellant was advised of the right to examine the appellate record and to file a *pro se* response. Appellant has filed a *pro se* response to the *Anders* brief raising sixteen arguable points of error. We find appellant's claims present no arguable grounds for appeal and affirm the judgment of the trial court.

Fourteen of appellant's complaints relate to alleged errors in the revocation proceeding wherein appellant's guilt was adjudicated. The court's decision to proceed with an adjudication of guilt is one of absolute discretion and is not reviewable. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5(b) (Vernon Supp. 2000); *Connolly v. State*, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999); *Cooper v. State*, 2 S.W.3d 500, 504 (Tex. App.—Texarkana 1999, pet. ref'd). An appellant whose deferred adjudication probation has been revoked and who has been adjudicated of the original charge may not raise on appeal contentions of error in the adjudication of guilt process. *See Connolly*, 983 S.W.2d at 741. Examples of challenges to a trial court's decision to adjudicate guilt include challenges to the sufficiency of the evidence to support the trial court's adjudication of guilt and claims of ineffective assistance of counsel at the hearing on the motion to adjudicate. *See Olowosuko v. State*, 826 S.W.2d 940, 942 n. 1 (Tex. Crim. App. 1992); *Cooper*, 2 S.W.3d 500 at 503-504. Appellant's first and third through fifteenth grounds of error are an attempt to appeal from the trial court's decision to adjudicate guilt, and as such, present nothing for review.

We will consider appellant's second and sixteenth grounds of error as both relate to proceedings after the adjudication of guilt. Article 42.12 section 5 (b) expressly allows an appeal of all proceedings after the adjudication of guilt on the original charge. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5(b) (Vernon Supp. 2000). Examples of proceedings after adjudication that may be appealed include the assessment of punishment and the pronouncement of sentence. *See id.* Appellant's second complaint alleges the trial court erred by sentencing him to sixteen years in prison after adjudication of appellant's guilt

when he was on deferred adjudication probation for a five year term. A defendant given deferred adjudication who violates the conditions of his probation can be sentenced to the maximum term provided for the offense to which he pled guilty. *See Reed v. State*, 644 S.W.2d 479, 484 (Tex. Crim. App. 1983). Once appellant violated the terms of his community supervision, the trial court was free to assess punishment within the parameters of the law. *See Watson v. State*, 924 S.W.2d 711, 714 (Tex. Crim. App. 1996). Sixteen years' imprisonment was within the parameters of the offense as witnessed by the written plea admonishments signed by appellant when he entered his plea of guilty to the original offense of aggravated assault. *See Anthony v. State*, 962 S.W.2d 242, 245 (Tex. App—Fort Worth 1998, no pet.). No error is presented for review.

Appellant's sixteenth complaint alleges ineffective assistance of counsel both at the adjudication proceeding and on appeal. For the reasons discussed above, we will not consider appellant's allegations relating to ineffective assistance of counsel at the adjudication proceeding, however, we will address his complaint regarding counsel on appeal, as proceedings after the adjudication of guilt may be considered by this court. Appellant argues that he requested the attorney who represented him at the adjudication proceeding to appeal his case. He contends counsel did nothing toward perfecting the appeal thereby forcing appellant to handle the appeal on his own. The record reflects otherwise. While it is true that counsel from the adjudication proceeding did not represent appellant on appeal, the record reflects that new counsel was appointed by the trial court to represent appellant on appeal once appellant informed the court that he was indigent and did not wish to represent himself on appeal. Appellate counsel examined the appellate record and filed an *Anders* brief after determining the appeal was frivolous and without merit. A defendant's right to assistance of counsel does not include the right to have an attorney raise frivolous claims. *See Johnson v. State*, 885 S.W.2d 641, 645 (Tex. App.—Waco 1994, pet. ref'd). After review of the record in the instant case, we agree with appellate counsel that the appeal is wholly frivolous and without merit.

Accordingly, the motion to withdraw is granted and the judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed January 4, 2001.

Panel consists of Chief Justice Murphy and Justices Amidei and Hudson.

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