

COURT OF APPEALS OF TEXAS, NINTH DISTRICT AT BEAUMONT

Tyree Jacoby Allen Patterson v. the State of Texas

Nos. 09-22-00308-CR and 09-22-00309-CR · No. Nos. 09-22-00308-CR and 09-22-00309-CR · Decided August 30, 2023

SUMMARY

The Ninth Court of Appeals of Texas reviewed Anders appeals from Patterson’s convictions for burglary of a habitation with attempted sexual assault in two trial causes. The court found no reversible error and concluded the appeals were wholly frivolous. It affirmed one judgment and affirmed the other as modified to delete duplicative court costs.

CASE DETAILS

COURT	Court of Appeals of Texas, Ninth District at Beaumont
WRITING FOR THE COURT	Leanne Johnson; Golemon, C.J.; Johnson, J.; Wright, J.
JURISDICTION	Texas
DECIDED	August 30, 2023
DOCKET	Nos. 09-22-00308-CR and 09-22-00309-CR
DISPOSITION	other
PROCEDURAL POSTURE	Patterson appealed two convictions for burglary of a habitation with the attempt to commit sexual assault. Appellate counsel filed Anders briefs stating that the appeals were without merit, Patterson filed pro se briefs, and the court reviewed the records for reversible error.
STANDARD OF REVIEW	Upon receiving Anders briefs and a pro se brief, the appellate court must conduct a full examination of the record to determine whether the appeal is wholly frivolous and whether reversible error exists.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; marked Do Not Publish.
PARTIES	Tyree Jacoby Allen Patterson v. The State of Texas

TOPICS

- criminal procedure
- appellate procedure
- remedies
- sentencing

PRACTICE AREAS

- criminal procedure
- appellate practice
- criminal costs and fees

QUESTIONS PRESENTED

1. Whether the Anders review of the records and pro se briefs revealed any arguable ground for reversal or reversible error.
2. Whether the trial court could assess the same court costs in both causes when Patterson was convicted of two or more offenses in the same action.
3. Whether the judgment in trial cause number 21DC-CR-00624 should be modified to delete duplicative court costs.

HOLDINGS

1. After reviewing the entire record, counsel's briefs, and Patterson's pro se briefs, the court found no reversible error and concluded that both appeals were wholly frivolous; therefore, appointment of new counsel for rebriefing was unnecessary.
2. When a criminal defendant is convicted of two or more offenses in the same action, the trial court may assess each court cost or fee only once.
3. The court of appeals may modify a trial court's judgment to delete an improper duplicative court-cost assessment and affirm the judgment as modified.

KEY QUOTATIONS

“Upon receiving an Anders brief, a court must conduct a full examination of the record to determine whether the appeal is wholly frivolous.” (at 2)

“Where a criminal defendant is convicted of two or more offenses in the same action, the trial court may assess each court cost or fee only once.” (at 3)

FACTUAL BACKGROUND

Patterson was convicted in two causes of burglary of a habitation with the attempt to commit felony sexual assault, both first-degree felonies. The offenses allegedly occurred on the same date and at the same home, and the jury found enhancement and habitual-offender allegations true, sentencing him to fifty-five years in each cause. The trial court assessed \$400 in court costs in each case, although the records showed the costs were duplicative.

PROCEDURAL HISTORY

The 253rd District Court of Liberty County convicted Patterson in two causes and sentenced him to fifty-five years of confinement in each cause, with the sentences ordered to run concurrently. Patterson timely appealed. The Ninth District Court of Appeals reviewed the full records, counsel's Anders briefs, and Patterson's pro se briefs, affirmed one judgment, and modified and affirmed the other to remove duplicative court costs.

DISPOSITION

other

CASES CITED

- *Anders v. California*, 386 U.S. 738 (1967)
- *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978)
- *Bledsoe v. State*, 178 S.W.3d 824 (Tex. Crim. App. 2005)
- *Penson v. Ohio*, 488 U.S. 75 (1988)
- *Stafford v. State*, 813 S.W.2d 503 (Tex. Crim. App. 1991)
- *Bigley v. State*, 865 S.W.2d 26 (Tex. Crim. App. 1993)

OPINION

PER CURIAM.

In The Court of Appeals Ninth District of Texas at Beaumont _____ NO. 09-22-00308-CR NO. 09-22-00309-CR _____ TYREE JACOBY ALLEN PATTERSON,
Appellant V. THE STATE OF TEXAS, Appellee

On Appeal from
the 253rd District Court Liberty County, Texas Trial Cause Nos. 21DC-CR-00623 and 21DC-CR-00624

MEMORANDUM OPINION Appellant Tyree Jacoby Allen Patterson was convicted in two trial causes of burglary of a habitation with the attempt to commit the felony offense of sexual assault, a first-degree felony.

See Tex. Penal Code Ann. § 30.02(d). Both indictments included an enhancement paragraph and a habitual-offender paragraph. See *id.* § 12.42. The indictments alleged that both offenses occurred on the same date and 1 at the same home, and there was evidence before the jury that Patterson attempted sexual assault against two people—the homeowner and the homeowner’s mother.

Patterson pleaded “not guilty” in both trial causes, but the jury found Patterson guilty in both causes. Patterson pleaded “not true” to the enhancement and habitual paragraphs, and after a hearing on punishment, the jury found the enhancement and habitual allegations “true” and sentenced Patterson to fifty-five years of confinement in each cause.

The trial court ordered the sentences to run concurrently. Patterson timely filed notices of appeal in each trial cause. Patterson’s appellate counsel filed briefs that present counsel’s professional evaluation of the record, and the appellate counsel concludes the appeals are without merit and that there are no meritorious issues for appeal and no arguable grounds for reversal.

See *Anders v. California*, 386 U.S. 738 (1967); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). On April 14, 2023, we granted an extension of time for Patterson to file pro se briefs, and Patterson filed pro se briefs in response.

The Court of Criminal Appeals has held that when a court of appeals receives an Anders brief and also a pro se brief, an appellate court has two choices. See *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). “It may determine that the appeal is wholly frivolous and issue an opinion explaining that it has reviewed the record and finds no reversible error[;] [o]r, it may determine that arguable grounds for appeal exist and remand the cause to the trial court so that new 2 counsel may be appointed to brief the issues.” *Id.* We do not address the merits of each claim raised in an Anders brief or a pro se brief when we have determined there are no arguable grounds for review.

Id. at 827. Upon receiving an Anders brief, a court must conduct a full examination of the record to determine whether the appeal is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988) (citing *Anders*, 386 U.S. at 744).

We have reviewed the entire record in both cases, counsel’s briefs, and Patterson’s pro se briefs, and we have found no reversible error, and we conclude the appeals are wholly frivolous. See *Bledsoe*, 178 S.W.3d at 827-28 (“Due to the nature of Anders briefs, by indicating in the opinion that it considered the issues raised in the briefs and reviewed the record for reversible error but found none, the court of appeals met the requirements of Texas Rule of Appellate Procedure 47.1.”).

Therefore, we find it unnecessary to order appointment of new counsel to re-brief the appeals. Cf. *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). The Anders briefs assert that the trial court assessed court costs of \$400 in both trial causes even though the cases were tried together. A review of the “Felony Court Cost” sheet for each case shows that the fees of \$400 charged in trial cause 21DC-CR-00623 were also assessed in trial cause number 21DC-CR-00624.

Where a criminal defendant is convicted of two or more offenses in the same action, the trial court may assess each court cost or fee only once. See Tex. Code Crim. Proc. 3 Ann. art. 102.073(a). Therefore, the records show that \$400 of the costs are duplicative.

We affirm the judgment in trial cause number 21DC-CR-00623. And we modify the judgment in trial cause number 21DC-CR-00624 to delete the \$400 in court costs and affirm that judgment as modified. See Tex. R. App. P. 43.2(b) (An appellate court may modify the trial court’s judgment and affirm the judgment as modified); *Bigley v. State*, 865 S.W.2d 26, 27 (Tex.

Crim. App. 1993) (a court of appeals may modify the judgment of the court below by correcting or reforming it).¹ AFFIRMED; AFFIRMED AS MODIFIED. _____

LEANNE JOHNSON Justice Submitted on August 14, 2023 Opinion Delivered August 30, 2023
Do Not Publish Before Golemon, C.J., Johnson and Wright, JJ. 1 Patterson may challenge our decision in these cases by filing petitions for discretionary review.

See Tex. R. App. P. 68. 4

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