

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

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