

FOURTEENTH COURT OF APPEALS OF TEXAS

Trumaine Marke Williams v. State

Williams v. State · No. 14-15-00262-CR · Decided December 15, 2015

SUMMARY

The Fourteenth Court of Appeals of Texas affirmed a conviction for aggravated robbery after reviewing counsel's Anders brief and finding no reversible error. The court reformed the judgment to delete \$7,604.48 in court-appointed attorneys' fees because the record did not show a material change in the indigent appellant's financial circumstances.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas
WRITING FOR THE COURT	Per Curiam; Chief Justice Frost; Justice Christopher; Justice Donovan
JURISDICTION	Texas
DECIDED	December 15, 2015
DOCKET	14-15-00262-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellant appealed his aggravated-robbery conviction. Appointed appellate counsel filed an Anders brief asserting that the appeal was wholly frivolous. The court independently reviewed the record, reformed the judgment to delete improperly assessed attorney's fees, and affirmed the judgment as reformed.
STANDARD OF REVIEW	In an Anders appeal, the appellate court independently reviews the record and counsel's brief for arguable grounds and reversible error. The court may reform the judgment when the record supports a ministerial correction.
PRECEDENTIAL VALUE	Unpublished, nonprecedential memorandum opinion; designated Do Not Publish under Tex. R. App. P. 47.2(b).
PARTIES	Trumaine Marke Williams v. The State of Texas

TOPICS

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QUESTIONS PRESENTED

1. Whether the record supported the assessment of attorney's fees against an appellant who had been found indigent and appointed counsel.
2. Whether the court of appeals should affirm the conviction after reviewing an Anders brief finding no arguable grounds for appeal.
3. Whether the judgment could be reformed in the Anders appeal without abating the appeal for appointment of new counsel.

HOLDINGS

1. The assessment of \$7,604.48 in attorney's fees was improper because the record contained no factual determination that Williams's financial circumstances had materially changed or that he had resources to repay the costs of appointed counsel.
2. When an Anders appeal presents no arguable grounds and the judgment can be corrected by reformation, the appellate court need not abate the appeal for appointment of new counsel.
3. The appeal was wholly frivolous and without merit, and the record disclosed no reversible error.

KEY QUOTATIONS

“Once found indigent, appellant is presumed to have remained indigent for the remainder of the proceedings absent a factual determination of a material change in his financial circumstances.” (at 2)

“Accordingly, the judgment of the trial court is affirmed, as reformed to delete the assessment of attorneys’ fees in the amount of \$7,604.48.” (at 3)

FACTUAL BACKGROUND

Williams was convicted of aggravated robbery and was represented by appointed counsel after filing an affidavit of indigence. The trial court assessed \$7,604.48 in attorney’s fees against him, but the record contained no finding that his financial circumstances had materially changed or that he had resources to repay the costs of appointed counsel.

PROCEDURAL HISTORY

The 300th District Court of Brazoria County convicted Williams of aggravated robbery and assessed \$7,604.48 in attorney's fees against him. Williams had been found indigent and had received appointed counsel. On appeal, counsel filed an Anders brief, Williams was advised of his right to file a pro se response, and no response was filed within more than 60 days. The Fourteenth Court of Appeals reformed the judgment to delete the attorney's-fee assessment and affirmed it as reformed.

DISPOSITION

affirmed

CASES CITED

- *Anders v. California*, 386 U.S. 738 (1967)
- *High v. State*, 573 S.W.2d 807, 811–13 (Tex. Crim. App. 1978)
- *Stafford v. State*, 813 S.W.2d 503, 512 (Tex. Crim. App. 1991)
- *Cates v. State*, 402 S.W.3d 250, 251–52 (Tex. Crim. App. 2013)
- *Ferguson v. State*, 435 S.W.3d 291, 295 (Tex. App.—Waco 2014, no pet.)
- *Bray v. State*, 179 S.W.3d 725, 730 (Tex. App.—Fort Worth 2005, no pet.)
- *Getts v. State*, 155 S.W.3d 153, 155 (Tex. Crim. App. 2005)
- *Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005)

OPINION

PER CURIAM.

Affirmed as Reformed and Memorandum Opinion filed December 15, 2015. In The Fourteenth Court of Appeals NO. 14-15-00262-CR TRUMAINE MARKE WILLIAMS, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the 300th District Court Brazoria County, Texas Trial Court Cause No. 72609 MEMORANDUM OPINION Appellant appeals his conviction for aggravated robbery. Appellant’s appointed counsel filed a brief in which he concludes the appeal is wholly frivolous and without merit.

The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967), by presenting a professional evaluation of the record and demonstrating why there are no arguable grounds to be advanced. See *High v. State*, 573 S.W.2d 807, 811–13 (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 file a pro se response.

See *Stafford v. State*, 813 S.W.2d 503, 512 (Tex. Crim. App. 1991). As of this date, more than 60 days have passed and no pro se response has been filed. The judgment contains an error in that the trial court assessed attorneys’ fees against appellant, who is indigent. A trial court is allowed to assess attorneys’ fees against a defendant who had court-appointed counsel if the trial court determines the defendant has financial resources enabling him to offset, in part or in whole, the costs of legal services provided.

See Tex. Code Crim. Proc. Ann. art. 26.05(g) (West Supp. 2015). Article 26.05(g) of the Texas Code of Criminal Procedure requires a present factual determination of the defendant’s financial resources without speculation about possible future resources. See *Cates v. State*, 402 S.W.3d 250, 252 (Tex. Crim. App. 2013).

The record reflects appellant filed an affidavit of indigence and the trial court appointed counsel to represent appellant at trial. Once found indigent, appellant is presumed to have remained indigent for the remainder of the proceedings absent a factual determination of a material change in his financial circumstances. See *Cates*, 402 S.W.3d at 251; Tex. Code Crim.

Proc. Ann. art. 26.04(p) (West Supp. 2015). A review of the record reveals there was not a finding by the trial court that appellant's financial circumstances changed and he was able to re-pay the costs of court-appointed counsel.

Therefore, there are insufficient facts in the record to rebut appellant's presumed indigence and justify the assessment of attorneys' fees against him under article 26.05(g). See Tex. Code Crim. Proc. Ann. art. 26.05(g).

Accordingly, we reform the trial court's judgment to delete the assessment of attorneys' fees in the amount of \$7,604.48. In an appeal in which counsel has 2 filed an Anders brief, we are not required to abate the appeal for appointment of new counsel if the judgment may be reformed. See *Ferguson v. State*, 435 S.W.3d 291, 295 (Tex. App.—Waco 2014, no pet.) (reforming judgment in Anders appeal to correct age of child complainant); *Bray v. State*, 179 S.W.3d 725, 730 (Tex.

App.—Fort Worth 2005, no pet.) (reforming judgment in Anders appeal to delete improper condition of parole); see also *Getts v. State*, 155 S.W.3d 153, 155 (Tex.Crim.App.2005) (affirming court of appeals' judgment reforming the judgment of conviction in Anders appeal).

Having reformed the judgment, as noted above, and having carefully reviewed the record and counsel's brief, we agree the appeal is wholly frivolous and without merit. Further, we find no reversible error in the record.

We are not to address the merits of each claim raised in an Anders brief or a pro se response when we have determined there are no arguable grounds for review. See *Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005).

Accordingly, the judgment of the trial court is affirmed, as reformed to delete the assessment of attorneys' fees in the amount of \$7,604.48. PER CURIAM Panel consists of Chief Justice Frost and Justices Christopher and Donovan. Do Not Publish — Tex. R. App. P. 47.2(b). 3