

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

Richard Claude Blais v. The State of Texas

Nos. 05-20-00556-CR and 05-20-00602-CR · No. Nos. 05-20-00556-CR and 05-20-00602-CR · Decided May 20, 2021

SUMMARY

The Fifth District Court of Appeals of Texas at Dallas reviewed Richard Claude Blais's convictions for intoxication assault causing serious bodily injury and failure to stop and render aid. The court found the Anders appeal frivolous and without merit, granted counsel's motion to withdraw, modified the judgments to correct deadly-weapon, enhancement, and duplicative court-cost entries, and affirmed the judgments as modified.

CASE DETAILS

COURT	Court of Appeals for the Fifth District of Texas at Dallas
WRITING FOR THE COURT	Robbie Partida-Kipness; Justice Myers; Justice Partida-Kipness; Justice Garcia
JURISDICTION	Texas
DECIDED	May 20, 2021
DOCKET	Nos. 05-20-00556-CR and 05-20-00602-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Blais appealed convictions for intoxication assault causing serious bodily injury and failure to stop and render aid after entering open guilty pleas and receiving concurrent ten-year sentences. Appointed appellate counsel filed an Anders brief, and the State filed cross-points seeking correction of clerical errors in the judgments.
STANDARD OF REVIEW	In an Anders appeal, the appellate court independently reviews the record and counsel's brief to determine whether any arguable grounds for appeal exist. A judgment may be modified when the appellate court has the necessary information to make the judgment speak the truth.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; designated do not publish under Tex. R. App. P. 47.2(b).
PARTIES	Richard Claude Blais v. The State of Texas

TOPICS

criminal procedure

appellate procedure

sentencing

appellate jurisdiction

preservation of error

PRACTICE AREAS

Texas criminal law

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Anders appeals

judgment correction

court costs

QUESTIONS PRESENTED

1. Whether appointed appellate counsel's Anders brief demonstrated that Blais's appeals were frivolous and without merit.
2. Whether the appellate court should modify the intoxication-assault judgment to reflect the trial court's affirmative deadly-weapon finding.
3. Whether the judgments should be corrected to reflect that the prior aggravated-assault conviction was the sole enhancement paragraph in each case.
4. Whether the judgment in the failure-to-stop-and-render-aid case should be modified to delete duplicative court costs assessed in a single criminal action.

HOLDINGS

1. The Anders brief satisfied the applicable requirements, the record presented no arguable grounds for appeal, and the appeals were frivolous and without merit.
2. The court may modify the intoxication-assault judgment to replace the erroneous notation of "N/A" with "Yes – A motor vehicle" under the deadly-weapon findings section.
3. A deadly-weapon finding is distinct from a sentence-enhancement finding and should be recorded in the separate deadly-weapon section of the judgment, not as a first enhancement paragraph. The prior aggravated-assault conviction was the sole enhancement paragraph in each case.
4. When two convictions arise from a single criminal action, the defendant may be assessed each court cost or fee only once; therefore, the duplicative \$290 award in cause number F-1941137-S had to be deleted.

KEY QUOTATIONS

"We have the power to modify a judgment to speak the truth when we have the necessary information to do so." (4)

"In a single criminal action in which a defendant is convicted of two or more offenses or of multiple counts of the same offense, the court may assess each court cost or fee only once against the defendant." (7)

FACTUAL BACKGROUND

Blais was charged with intoxication assault causing serious bodily injury in cause number F-1941136-S and failure to stop and render aid in cause number F-1941137-S. He entered open guilty pleas to both offenses, pleaded true to the prior aggravated-assault conviction alleged for enhancement, and pleaded not true to the deadly-weapon allegation in the intoxication-assault case. The trial court found him guilty, made an affirmative finding that a motor vehicle was used as a deadly weapon, and imposed concurrent ten-year sentences. The

judgments incorrectly identified enhancement paragraphs and assessed duplicative court costs in the failure-to-stop-and-render-aid case.

PROCEDURAL HISTORY

Blais was indicted in two Dallas County cases, pleaded guilty to both offenses, and pleaded true to the prior-felony enhancement while pleading not true to the deadly-weapon allegation. The trial court found him guilty and sentenced him to ten years' confinement in each case, concurrently. On appeal, counsel filed an Anders brief and moved to withdraw; the State requested modifications to the judgments concerning the deadly-weapon finding, enhancement-paragraph designations, and duplicative court costs. The court modified both judgments, granted counsel's motion to withdraw, and affirmed as modified.

DISPOSITION

affirmed

CASES CITED

- *Anders v. California*, 386 U.S. 738 (1967)
- *In re Schulman*, 252 S.W.3d 403, 406–07 (Tex. Crim. App. 2008) (orig. proceeding)
- *High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. [Panel Op.] 1978)
- *Kelly v. State*, 436 S.W.3d 313, 319–21 (Tex. Crim. App. 2014)
- *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005)
- *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993)
- *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd) (en banc)
- *Ray v. State*, No. 05-17-00820, 2018 WL 1149421, at *2 (Tex. App.—Dallas Mar. 5, 2018, no pet.) (mem. op., not designated for publication)
- *State v. Kersh*, 127 S.W.3d 775, 777 (Tex. Crim. App. 2004)
- *Arrington v. State*, No. 05-17-01194-CR, 2018 WL 6333253, at *5 (Tex. App.—Dallas Nov. 29, 2018, no pet.) (mem. op., not designated for publication)
- *Burton v. State*, No. 05-18-00608-CR, 2019 WL 3543580, at *3 (Tex. App.—Dallas Aug. 5, 2019, no pet.) (mem. op., not designated for publication)
- *Hurlburt v. State*, 506 S.W.3d 199, 201–04 (Tex. App.—Waco 2016, no pet.)
- *Johnson v. State*, 423 S.W.3d 385, 390–91 (Tex. Crim. App. 2014)
- *Meza v. State*, 206 S.W.3d 684, 685 n.6 (Tex. Crim. App. 2006)