

Affirmed and Opinion filed May 3, 2001.



In The

Fourteenth Court of Appeals

NOS. 14-00-00793-CR & 14-00-00795-CR

WILLIAM DOUGLAS CARWILE , Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 177th District Court
Harris County, Texas
Trial Court Cause No. 827,435 & 827,436**

OPINION

Appellant pleaded guilty to two cases of sexual assault of a child and pleaded true to both enhancement paragraphs in each case. In each case, the trial court found appellant guilty, found the enhancement allegations true, and assessed punishment in accordance with a plea bargain agreement at confinement for twenty-five 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 each case in which she concludes that the appeals are wholly frivolous and without merit. The briefs meet 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). In her *Anders* brief, counsel raises, then rejects as frivolous, two potential points of error.

First, counsel claims that the trial court credited the jail time appellant served against his court costs rather than his sentence. *See* TEX. CODE CRIM. PROC. ANN. art. 42.03 § 2(a) (Vernon Supp. 2001). However, a failure to credit jail time against a sentence is not among the matters that may be raised in a direct appeal of a negotiated plea bargain. *See* TEX. R. APP. P. 25.2(b)(3). Nor can a negotiated plea be directly appealed on the basis that it was involuntary,¹ *i.e.*, because an appellant was not admonished that his jail time would be credited against court costs rather than his sentence. Therefore, we agree with counsel that no arguable ground of error is shown.

Second, counsel argues that appellant may have been deprived of counsel during a critical stage of the proceeding. Because appellant filed a *pro se* notice of appeal on the thirtieth day following his convictions, which included a request for appointment of new counsel, counsel on appeal theorizes that appellant may have been deprived of the assistance of counsel during the time for filing a motion for new trial. There is nothing in the record to suggest that appellant was not counseled by his attorney regarding the merits of a motion for new trial. We therefore assume that appellant considered this option and rejected it. *See Oldham v. State*, 977 S.W.2d 354, 363 (Tex. Crim. App. 1998). As in *Oldham*, the fact that appellant filed a *pro se* notice of appeal is evidence that he was informed of at least some of his appellate rights. Absent a showing in the record to the contrary, we assume that appellant was adequately counseled regarding his right to file a motion for new trial. *See id.* Appellant has failed to overcome the presumption that he was adequately represented by counsel during the time for filing a motion for new trial. *See Smith v. State*, 17 S.W.3d 660, 663 (Tex. Crim. App. 2000). No arguable ground of error is presented for review.

Copies of counsel's briefs were delivered to appellant. Appellant was advised of the right to examine the appellate record and to file a *pro se* response. As of this date, no *pro se*

¹ *See Cooper v. State*, No. 1100-99, 2001 WL 321579 (Tex. Crim. App. April 4, 2001).

response has been filed in either case.

We have carefully reviewed the records and counsel's briefs and agree that the appeals are wholly frivolous and without merit. Further, we find no reversible error in either record.

Accordingly, the judgment of the trial court in each case is affirmed and the motions to withdraw are granted.

PER CURIAM

Judgment rendered and Opinion filed May 3, 2001.

Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.²

Do Not Publish — TEX. R. APP. P. 47.3(b).

² Senior Chief Justice Paul C. Murphy sitting by assignment.