

Affirmed and Opinion filed June 21, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00127-CR

KENJI L. LEE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 811,821**

MEMORANDUM OPINION

Appellant entered a plea of guilty to the offense of aggravated robbery. On December 3, 1999, after a pre-sentence investigation, the trial court sentenced appellant to confinement for seventeen years in the Institutional Division of the Texas Department of Criminal Justice.

Appellant's appointed counsel filed a brief in which he concludes that the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (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).

We have carefully reviewed the record and counsel's brief and agree that the appeal is wholly frivolous and without merit. Further, we find no reversible error in the record. A discussion of the brief would add nothing to the jurisprudence of the state. 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. Appellant has submitted a response to counsel's brief in which he complains that the trial court erred in entering an affirmative finding on the use of a deadly weapon.

The indictment against appellant included an allegation that he used and exhibited a deadly weapon, namely a firearm, in the commission of the offense. Appellant stipulated in his judicial confession that the allegations in the indictment were true. When a defendant pleads guilty to an indictment that includes an allegation that he used a deadly weapon, the trial court may make a deadly weapon finding. *Ex parte Franklin*, 757 S.W.2d 778, 784 (Tex. Crim. App.1988); *Ex parte Kirkland*, 768 S.W.2d 304, 305 (Tex. Crim. App. 1989) (holding that reference to a finding of guilt as charged in the indictment constitutes a proper affirmative finding). Moreover, at appellant's sentencing hearing, the complainant testified appellant approached him with a gun and took his wallet. Thus, appellant's legal and factual sufficiency challenges are without merit. Thus, appellant's legal and factual sufficiency points are without merit.

Appellant's assertion that the trial court merely made an implied affirmative finding is also without merit. An affirmative deadly weapon finding is not part of a defendant's sentence that must be orally pronounced by the trial court. *Marshall v. State*, 860 S.W.2d 142, 143 (Tex. App.—Dallas 1993, no pet.). It is only required that the trial court enter the affirmative finding of the use of a deadly weapon in its judgment, as was done in this case. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 3g(a)(2) (Vernon Supp.2001).

We conclude that appellant's pro se response to counsel's *Anders* brief alleges no arguable points of error.

Accordingly, the judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed June 21,2001.

Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.¹

Do not publish — TEX. R. APP. P. 47.3(b).

¹ Senior Chief Justice Paul C. Murphy sitting by assignment.