

APPENDIX A

IN THE NINTH COURT OF APPEALS

09-20-00141-CR

EX PARTE RODNEY DALE HOOD

On Appeal from the County Court at Law
Liberty County, Texas
Trial Cause No. 39067

JUDGMENT

Having considered this cause on appeal, THE NINTH COURT OF APPEALS concludes that the order of the trial court should be affirmed. In accordance with the Court's opinion, IT IS THEREFORE ORDERED the order of the trial court is affirmed.

Opinion of the Court delivered by Justice Hollis Horton

March 10, 2021

AFFIRMED

Copies of this judgment and the Court's opinion are certified for observance.

Carly Latiolais
Clerk of the Court

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-20-00141-CR

EX PARTE RODNEY DALE HOOD

**On Appeal from the County Court at Law
Liberty County, Texas
Trial Cause No. 39067**

MEMORANDUM OPINION

Rodney Dale Hood appeals from the trial court's ruling denying his application for habeas relief from a judgment in which he was found guilty of committing a misdemeanor DWI.¹ The record shows that Hood's conviction arose from an agreement based on a plea bargain. In a petition seeking to overturn his conviction in Trial Court Cause Number 390679, Hood asked the trial court to set

¹The judgment that is the subject of Hood's habeas petition was assigned Cause Number 390679 by the court in which it was filed, the County Court at Law of Liberty County, Texas.

aside his conviction based on a claim alleging that he did not knowingly, intelligently, or voluntarily plead guilty to the DWI. Additionally, Hood argues the attorney who represented him on the DWI failed to discharge his duty to provide Hood with effective assistance of counsel. Because we conclude the trial court did not err in denying Hood's petition, we affirm.

Background

In 2012, Hood filed an application for a writ of habeas corpus. In it, he asked the trial court to set aside his 1988 conviction on the misdemeanor DWI. Hood amended the habeas application he filed in 2012 in 2017 and alleged the State of Texas "guaranteed (in writing) that the underlying misdemeanor DWI conviction [sic] would never be used to elevate or enhance any subsequent crime or sentence[.]". In July and August 2019, the trial court heard argument from the attorneys for the parties to consider the issues raised in Hood's application challenging the validity of the 1988 conviction for DWI. At the conclusion of the second hearing, the trial court advised the attorneys who were present the court would deny Hood's petition. The trial court also asked the attorney for the State to provide the court with an order to carry out its ruling. The trial court signed an order denying Hood's application in April 2020. At that same time, the trial court provided the parties with its written findings.

In the order denying Hood's petition seeking habeas relief, the trial court explains in detail why it found Hood's application for relief has no merit. For instance, in one finding, the trial court explained that Hood's allegations claiming the State guaranteed Hood that it would never use Hood's 1988 conviction on the DWI to elevate or enhance some other sentence "is not credible."

After the trial court denied Hood's petition, Hood appealed. In response to the notice, the trial court appointed the same attorney who represented Hood in the trial court in the habeas proceeding to represent him in his appeal.

On appeal, Hood's attorney filed a brief explaining the attorney could find no meritorious issues to argue in Hood's appeal that would support an argument to overturn the trial court's ruling on Hood's petition for habeas corpus. The brief presents a professional evaluation of the record.² The record also shows that Hood's attorney provided Hood with a copy of the brief in the appeal and informed Hood about how he could obtain a copy of the record and file a pro se response.

Hood filed several briefs and supplemental briefs in the appeal. In them, Hood complains about the merits of the trial court's ruling to deny his application. He also

²See *Anders v. California*, 386 U.S. 738, 744 (1967); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978).

complains about the adequacy of the attorney the trial court appointed to represent him on his habeas application and in the appeal.

Analysis

After reviewing the appellate record, the *Anders* brief filed by Hood's counsel, Hood's briefs and supplemental briefs, and the brief filed by the State, we find Hood's appeal is frivolous and lacks merit. The judgment of the trial court is affirmed. Appellate counsel's motion to withdraw is granted.³ All motions Hood filed that have not been ruled on in this Court are denied. Hood is also not entitled to the appointment of counsel to assist Hood should he seek to appeal. That said, should Hood desire to have this Court's ruling reviewed, he must either retain an attorney to file a petition for discretionary review or file a pro se petition seeking discretionary review in the Court of Criminal Appeals. Should Hood seek discretionary review, he must file his petition within thirty days from the later of (1) the date of this opinion, or (2) the date the last timely motion for rehearing or en banc reconsideration is overruled by this Court.⁴

³See *Ex parte Bowen*, 835 S.W.2d 276, 277 (Tex. App.—Beaumont 1992, no pet.); *Nichols v. State*, 954 S.W.2d 83, 85-86 (Tex. App.—San Antonio 1997, no pet.); *Brunsv. State*, 924 S.W.2d 176, 177 (Tex. App.—San Antonio 1996, no pet.).

⁴See Tex. R. App. P. 68.2. Should Hood file a petition for discretionary review, the petition he files in the Court of Criminal Appeals must comply with the requirements in Rule 68.4 of the Texas Rules of Appellate Procedure. *Id.* 68.3, 68.4.

Because Hood's appeal is frivolous, the trial court's judgment is
AFFIRMED.

HOLLIS HORTON
Justice

Submitted on October 27, 2020
Opinion Delivered March 10, 2021
Do Not Publish

Before Golemon, C.J., Horton and Johnson, JJ.

APPENDIX B

Cause Number 39067

Ex Parte	§	IN THE COUNTY
	§	
	§	COURT AT LAW
	§	
RODNEY DALE HOOD	§	LIBERTY COUNTY, TEXAS

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

On this day, the Court decided the Application for Writ of Habeas Corpus filed by Rodney Dale Hood pursuant to Article 11.09 of the Texas Code of Criminal Procedure.

BACKGROUND

- 1) RODNEY DALE HOOD (hereinafter Applicant), is currently incarcerated in the Jester III Unit of the Institutional Division of the Texas Department of Criminal Justice, TDCJ#01659266, pursuant to the Judgment in Cause No. 10-01-00283-CR in the 410th Judicial District Court, Montgomery County, Texas, wherein Applicant was convicted on May 4, 2010 of the offense of DRIVING WHILE INTOXICATED 3rd or MORE (enhanced), and sentenced to fifty (50) years confinement in the TDCJ-ID.
- 2) On or about September 20, 1987, the Applicant was arrested for Driving While Intoxicated and subsequently charged in Cause Number 39,067 in the Liberty County Court at Law. On February 5, 1988, Mr. Hood was convicted and

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placed on community supervision in that cause number. That conviction was used as one of the two prior, jurisdictional convictions in Applicant's 2010 conviction in Montgomery County.

- 3) Applicant has sought review of his 2010 conviction through every means available. His direct appeal, petition for discretionary review and writ for certiorari were all denied upon an *Anders* brief by his attorney. *See Hood v. State*, No. 14-10-00687-CR, 2011 WL 1660743 (Tex. App.—Houston [14th Dist.] Apr. 29, 2011, pet. ref'd) cert. denied sub. nom. *Hood v. Texas*, 133 S.Ct. 118 (2012). An Application for Writ of Habeas Corpus attempting to attack the 2010, Montgomery County conviction was denied by the Court of Criminal Appeals without a written order. *See Hood v. State*, No. WR-75,764-02 (Tex.Crim.App. Nov. 6, 2013).
- 4) Applicant now seeks release from his incarceration for his 2010 sentence by attacking his 1988 conviction. Applicant claims that his 1988 conviction is a void judgment because the judgment appears to him to defer a finding of guilt, in contravention of the law.
- 5) The Court of Criminal Appeals has considered a case almost exactly on point and there found that the language used in Applicant's judgment was sufficient evidence that the disposition was a conviction for the purposes of later enhancement. *See Gonzales v. State*, 309 S.W.3d 48 (Tex.Crim.App. 2010).

When read in context, the sense of each paragraph becomes quite clear. The first paragraph shows that the judgment is final. The middle paragraph then takes community supervision into consideration, whereby the third paragraph at issue in this case suspends the imposed sentence in *52 favor of such community supervision. Thus, the words "the finding of guilty herein shall not be final, that no judgment be rendered thereon" in the judgment do not pertain to the finality of the conviction for enhancement purposes, but rather to the suspension of the sentence necessary to grant community supervision to appellant.

Id at 51-52.

FINDINGS OF FACT

- 6) The Applicant, Rodney Dale Hood, is the same subject as the defendant in Cause Number 39067 of the Liberty County Court at Law, Liberty County, Texas.
- 7) The Applicant, after being duly admonished and advised of his rights, pled guilty in open court to the offense of Driving While Intoxicated in Cause Number 39067 on February 5, 1988.
- 8) The Applicant executed and the court received as evidence against him a signed Stipulation of Evidence wherein the Applicant:

confess[ed] to the following facts and agree and stipulate that these facts are true and correct and constitute the evidence of this case. On the 21st day of September, A.D., 1987, in Liberty County, Texas, I [Applicant] did then and there unlawfully drive and operate a motor vehicle in a public place, to-wit: a public road and highway, while intoxicated; namely, not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled

substance, a drug, or a combination of two or more of those substances into the body; and having an alcohol concentration of 0.10 or more. . .

9) On February 5, 1988, the Court entered the following finding in its judgment:

The Court having heard the information read and the evidence submitted thereon, it is considered and adjudged by the Court that the Defendant is guilty as charged in the information of the offense of driving while intoxicated and assesses his punishment at a fine of \$1500.00 and one year confinement in the Liberty County Jail, together with all costs in this behalf incurred. (Emphasis added.)

10) The judgment next turns to the Applicant's request for probation:

It appearing to the Court, however, that before this trial Defendant made application in writing and under oath to the Court for probation herein; and it further appearing to the Court that Defendant satisfies the requirements of the Misdemeanor Probation Law of Texas and that the ends of justice and the best interests of society and of the Defendant will be served by granting probation in this cause.

11) The judgment continues:

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that the finding of guilty herein shall not be *final*, that no judgment be rendered thereon, and that Defendant be, and is hereby placed on probation in this cause for a period of two years from this date. . . (Emphasis original).

12) Applicant was arrested on April 29, 1990 for a warrant for Revocation of Probation in Cause Number 39067. Applicant posted bail and was released on April 29, 1990 and was ordered to appear on Thursday May 24, 1990 at 8:00AM in the Liberty County Court at Law.

13) The Liberty County Clerk's File contains no additional actions taken by this Court with regards to Cause Number 39067. No Judgment Revoking Community Supervision was issued by this Court.

14) Applicant's allegation that the State of Texas "guaranteed (in writing) that the underlying misdemeanor DWI conviction [sic] would never be used to elevate or enhance any subsequent crime or sentence" is not credible.

15) The Liberty County Clerk's File contains no written plea agreements between the State of Texas and the Applicant detailing any negotiated terms whereby the State of Texas promised not to use "the underlying misdemeanor DWI conviction" as a basis for enhancement of "future crime[s] or sentence[s]".

16) Applicant's allegation that his trial counsel advised him that the "language in the written contract signed by Applicant guaranteed that the DWI conviction [sic] underlying this issue could never be used to elevate or enhance any future crime or sentence" is not credible.

17) Applicant executed and submitted written admonishments. In them, Applicant stated:

... I, the undersigned defendant, ask the Court to proceed immediately after this paper is filed, to arraign me in this case, to accept my Plea of Guilty and try me without a Jury, to receive evidence concerning the facts of this Case in the way I have agreed to above, **to render**

judgment convicting me on my Plea of Guilty, and having done so, to immediately assess my punishment in the case. . . (Emphasis added).

CONCLUSIONS OF LAW

- 18) At the time that Applicant was placed on community supervision, Article 6701I-1 of the Texas Revised Civil and Criminal Statutes governed judgments adjudicating Driving While Intoxicated offenses. "For the purposes of this article, a conviction for an offense that occurs on or after January 1, 1984, is a final conviction, whether or not the sentence for the conviction is probated." Art. 6701I-1, Vernon's Revised Statutes.
- 19) The words "the finding of guilty herein shall not be final, that no judgment be rendered thereon" in the judgment do not pertain to the finality of the conviction, but rather to the suspension of the sentence necessary to grant community supervision to appellant.
- 20) Applicant's conviction was final as a matter of law.
- 21) Applicant's judgment was within the prescribed minimum and maximum authorized by statute.
- 22) Applicant's judgment was not void as a matter of law.

THEREFORE, Rodney Dale Hood's Application for Writ of Habeas Corpus is
DENIED.

Signed on April 1, 2020

Judge Presiding

Thomas Chambers

APPROVED:

COUNTY ATTORNEY'S OFFICE

231 0001-4
FILED FOR RECORD

APR - 1 2020

LEEDS COUNTY CLERK'S OFFICE
BETH H. LARSON, CLERK
APR 1 2020

APPENDIX C

