

Dismiss in part; Affirm and Opinion Filed July 19, 2016



**In The
Court of Appeals
Fifth District of Texas at Dallas**

**No. 05-15-00006-CR
No. 05-15-00007-CR
No. 05-15-00008-CR
No. 05-15-00009-CR**

**GARY WAYNE BARNES SR., Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 3
Dallas County, Texas
Trial Court Cause Nos. F80-16530-J, F81-01027-J, F81-01105-J, F81-02518-J**

MEMORANDUM OPINION

**Before Chief Justice Wright, Justice Myers, and Justice Brown
Opinion by Chief Justice Wright**

In 1981, a jury convicted Gary Wayne Barnes, Sr. of three aggravated rape offenses and one burglary of a habitation offense. The jury assessed punishment at life imprisonment and a \$10,000 fine in each case. In 2007, appellant filed a motion for post-conviction DNA testing. The trial court granted DNA testing in all four cases. On June 8, 2009, the trial court held a hearing regarding the results of the DNA testing in cause nos. 05-15-00007-CR, 05-15-00008-CR, and 05-15-00009-CR. The trial court entered written findings that had the DNA results been available during trial for the offenses, it is not reasonably probable that appellant would not have been convicted. On July 23, 2009, the trial court held a hearing on the results of the post-conviction DNA testing in cause no. 05-15-00006-CR, and entered written findings that had the

DNA results been available during trial for the offenses, it is not reasonably probable that appellant would not have been convicted. On August 11, 2009, the trial court entered an order in cause no. 05-15-00006-CR and a separate order in cause nos. 05-15-00007-CR, 05-15-00008-CR, and 05-15-00009-CR reiterating its findings that DNA test results did not exonerate appellant.

In April 2014, appellant filed a pro se motion for subsequent post-conviction DNA testing in cause nos. 05-15-00006-CR, 05-15-00007-CR, and 05-15-00008-CR.¹ Before acting on the motion, the trial court determined that the previous article 64.04 findings for cause nos. 05-15-00007-CR, 05-15-00008-CR, and 05-15-00009-CR could not be located in the files, so it entered new article 64.04 findings on December 11, 2014 that reiterated the findings entered by the trial court in 2009. On January 6, 2015, appellant filed a notice of appeal seeking review of the trial court's August 11, 2009 and the December 11, 2014 findings on the results of the DNA testing in cause nos. 05-15-00007-CR, 05-15-00008-CR. and 05-15-00009-CR.

In cause no. 05-15-00006-CR, appellant's January 6, 2015 notice of appeal seeks review of an order entered on August 11, 2009. Because appellant's notice of appeal is untimely, we lack jurisdiction to consider it. *See* TEX. R. APP. P. 26.2(a)(1).

In cause nos. 05-15-00007-CR, 05-15-00008-CR. and 05-15-00009-CR, appellant's attorney has filed a brief in which she concludes the appeals are wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967). The brief presents a professional evaluation of the record showing why, in effect, there are no arguable grounds to advance. *See High v. State*, 573 S.W.2d 807, 811–12 (Tex. Crim. App. [Panel Op.] 1978). Counsel delivered a copy of the brief to appellant. *See Kelly v. State*, 436 S.W.3d 313,

¹ The subsequent round of DNA testing is ongoing and not before this Court.

319–21 (Tex. Crim. App. 2014) (identifying duties of appellate courts and counsel in *Anders* cases).

Appellant filed a pro se response raising several issues. After reviewing counsel’s brief, appellant’s pro se response, and the record, we agree the appeals are frivolous and without merit. *See Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005) (explaining appellate court’s duty in *Anders* cases). We find nothing in the record that might arguably support the appeals.

We dismiss the appeal in cause no. 05-15-00006-CR for want of jurisdiction. In cause nos. 05-15-00007-CR, 05-15-00008-CR, and 05-15-00009-CR, we affirm the trial court’s orders.

/Carolyn Wright/

CAROLYN WRIGHT
CHIEF JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

GARY WAYNE BARNES SR., Appellant

No. 05-15-00006-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 3, Dallas County, Texas

Trial Court Cause No. F80-16530-J.

Opinion delivered by Chief Justice Wright.

Justices Myers and Brown participating.

Based on the Court's opinion of this date, the appeal is **DISMISSED** for want of jurisdiction.

Judgment entered July 19, 2016.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

GARY WAYNE BARNES SR., Appellant

No. 05-15-00007-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 3, Dallas County, Texas

Trial Court Cause No. F81-01027-J.

Opinion delivered by Chief Justice Wright.

Justices Myers and Brown participating.

Based on the Court's opinion of this date, the order of the trial court is **AFFIRMED**.

Judgment entered July 19, 2016.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

GARY WAYNE BARNES SR., Appellant

No. 05-15-00008-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 3, Dallas County, Texas

Trial Court Cause No. F81-01105-J.

Opinion delivered by Chief Justice Wright.

Justices Myers and Brown participating.

Based on the Court's opinion of this date, the order of the trial court is **AFFIRMED**.

Judgment entered July 19, 2016.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

GARY WAYNE BARNES SR., Appellant

No. 05-15-00009-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 3, Dallas County, Texas

Trial Court Cause No. F81-02518-J.

Opinion delivered by Chief Justice Wright.

Justices Myers and Brown participating.

Based on the Court's opinion of this date, the order of the trial court is **AFFIRMED**.

Judgment entered July 19, 2016.