

Opinion issued July 28, 2016



In The
Court of Appeals
For The
First District of Texas

NO. 01-14-00156-CR

JAVIER GALINDO PACHECO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from 262nd District Court
Harris County, Texas
Trial Court Cause No. 1341972**

MEMORANDUM OPINION

Appellant, Javier Galindo Pacheco, pleaded guilty to the second-degree felony offense of sexual assault of a child under seventeen, without an agreed recommendation as to punishment.¹ The trial court withheld a finding of guilt and

¹ See TEX. PENAL CODE ANN. §§ 22.011(a)(2)(C), (c)(1), (f) (West Supp. 2015).

ordered a pre-sentence investigation report. Following a pre-sentence investigation and hearing, the trial court found appellant guilty as charged, and assessed his punishment at eighteen years' confinement. This sentence is within the applicable sentencing range.² The trial court certified that this was not a plea-bargain case and that appellant had the right of appeal, and appellant timely appealed. *See* TEX. R. APP. P. 25.2(a)(2), 26.2(a)(1).

This Court issued an order striking appellant's counsel's brief—which only moved to abate the appeal and remand for the trial court to hold a hearing on his motion for new trial—and denying the motion to abate, and we ordered counsel to file an amended brief on the merits or a compliant *Anders* brief. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). Appellant's appointed counsel has filed a motion to withdraw, along with an amended *Anders* brief stating that the record presents no reversible error and that, therefore, the appeal is without merit and is frivolous.

Counsel's amended brief meets the *Anders* requirements by presenting a professional evaluation of the record and supplying this Court with references to the record and legal authority. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *see also High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978). Counsel indicates that she has thoroughly reviewed the record and that she is unable to advance any

² *See id.* § 12.33(a) (West Supp. 2015).

grounds of error that warrant reversal. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *Mitchell v. State*, 193 S.W.3d 153, 155 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

Appellant’s counsel has informed us that she has delivered a copy of the motion to withdraw and *Anders* brief to appellant and informed him of his right to file a response and access to the record. *See In re Schulman*, 252 S.W.3d 403, 408 (Tex. Crim. App. 2008). Furthermore, a copy of the record has been sent to appellant for review. *See Kelly v. State*, 436 S.W.3d 313, 322 (Tex. Crim. App. 2014). Appellant filed two *pro se* letters written in Spanish which, after this Court abated for the trial court to have certified English translations filed in this Court, we construe as his *pro se* responses to his counsel’s *Anders* brief.

We have independently reviewed the entire record in this appeal, and we conclude that no reversible error exists in the record, that there are no arguable grounds for review, and that therefore the appeal is frivolous. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400 (emphasizing that reviewing court—and not counsel—determines, after full examination of proceedings, whether appeal is wholly frivolous); *Garner v. State*, 300 S.W.3d 763, 767 (Tex. Crim. App. 2009) (reviewing court must determine whether arguable grounds for review exist); *Bledsoe v. State*, 178 S.W.3d 824, 826–28 (Tex. Crim. App. 2005) (reviewing court is not to address merits of each claim raised in *Anders* brief or *pro se* response after determining there

are no arguable grounds for review); *Mitchell*, 193 S.W.3d at 155. An appellant may challenge a holding that there are no arguable grounds for appeal by filing a petition for discretionary review in the Texas Court of Criminal Appeals. *See Bledsoe*, 178 S.W.3d at 827 n.6.

CONCLUSION

Accordingly, we affirm the judgment of the trial court and grant counsel's motion to withdraw.³ *See* TEX. R. APP. P. 43.2(a). Attorney Maite Sample must immediately send the required notice and file a copy of that notice with the Clerk of this Court. *See* TEX. R. APP. P. 6.5(c). We dismiss any other pending motions as moot.

PER CURIAM

Panel consists of Justices Higley, Bland, and Massengale.

Do not publish. TEX. R. APP. P. 47.2(b).

³ Appointed counsel still has a duty to inform appellant of the result of this appeal and that he may, on his own, pursue discretionary review in the Texas Court of Criminal Appeals. *See Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005).