

NO. 07-09-0160-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
OCTOBER 7, 2009

BRANDON MCDONALD,

Appellant

v.

THE STATE OF TEXAS,

Appellee

FROM THE 110TH DISTRICT COURT OF FLOYD COUNTY;
NO. 4375; HON. WILLIAM P. SMITH, PRESIDING

Memorandum Anders Opinion

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

Appellant Brandon McDonald appeals his conviction for burglary of a habitation with intent to commit sexual assault. A jury found him guilty of the offense and assessed punishment at sixty years in prison. Appellant timely filed his notice of appeal.

Appellant's appointed counsel has filed a motion to withdraw, together with an *Anders*¹ brief, wherein he certifies that, after diligently searching the record, he has concluded that appellant's appeal is without merit. Along with his brief, he has filed a copy of a letter sent to appellant informing him of counsel's belief that there was no reversible error and of appellant's right to appeal *pro se*. By letter dated July 30, 2009, this court notified appellant of his right to file his own brief or response by August 31, 2009, if he wished to do so. Appellant filed a request for extension of time to file his response which was granted to September 30, 2009. To date no response has been filed.

In compliance with the principles enunciated in *Anders*, appellate counsel discussed one potential area for error which was the denial of appellant's request for jury instructions on the lesser included offenses of 1) burglary of a habitation, 2) criminal trespass and 3) sexual assault. Upon his final analysis, counsel determined no reversible error existed. Thereafter, we conducted our own review of the record to assess the accuracy of appellate counsel's conclusions and to uncover any error, reversible or otherwise, pursuant to *Stafford v. State*, 813 S.W.2d 503 (Tex. Crim. App. 1991), and concluded the same.

Accordingly, the motion to withdraw is granted and the judgment is affirmed.²

Brian Quinn
Chief Justice

Do not publish.

¹See *Anders v. California*, 386 U.S. 738, 744-45, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

²Counsel shall, within five days after this opinion is handed down, send his client a copy of the opinion and judgment, along with notification of appellant's right to file a *pro se* petition for discretionary review. See TEX. R. APP. P. 48.4.