IN THE
TENTH COURT OF APPEALS

No. 10-10-00424-CR

LARRY RANDALL STEELE,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 278th District Court
Madison County, Texas
Trial Court No. 11,379

ABATEMENT ORDER

Larry Randall Steele was convicted of the offense of possession of cocaine less than one gram. TEX. HEALTH & SAFETY CODE ANN. § 481.115 (West 2010). Steele was sentenced to two years imprisonment in the state jail. Counsel for Steele has filed a motion to withdraw as counsel and a brief in support of his motion pursuant to *Anders v. California*. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

The brief submitted by Steele's court-appointed counsel states his professional opinion that there are no arguable grounds for reversal on appeal and, therefore, that

any appeal would lack merit. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400. Steele's counsel sent a copy of the brief to Steele, requested permission to withdraw from the case, and notified Steele of his right to review the record and file a *pro se* response, which Steele has not done.

When this Court receives an *Anders* brief from a defendant's court-appointed attorney who asserts that no arguable grounds for appeal exist, we must determine that issue independently by conducting our own review of the entire record. *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 case is "wholly frivolous"); *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991) (citing same passage from *Anders*). An appeal is "wholly frivolous" or "without merit" when it "lacks any basis in law or fact." *McCoy v. Court of Appeals*, 486 U.S. 429, 439 n.10, 108 S. Ct. 1895, 100 L. Ed. 2d 440 (1988). Arguments are frivolous when they "cannot conceivably persuade the court." *McCoy*, 486 U.S. at 436. An appeal is not wholly frivolous when it is based on "arguable grounds." *Stafford*, 813 S.W.2d at 511. In conducting our review, we consider any *pro se* response that the defendant files to his appointed counsel's *Anders* brief. *See Bledsoe v. State*, 178 S.W.3d 824, 826-28 (Tex. Crim. App. 2005).

Our role in this *Anders* appeal, which includes a *pro se* response by Steele, is limited to determining whether arguable grounds for appeal exist. *Id*. at 827. If we determine that an arguable ground for appeal exists, we must abate the appeal and remand the case to the trial court to allow the court-appointed attorney to withdraw. *See id*. The trial court must then appoint another attorney to present all arguable

grounds for appeal. *See id*. We do not rule on the ultimate merits of the issues raised by Steele in his *pro se* response at this juncture. *Id*. If we determine that there are arguable grounds for appeal, Steele is entitled to have new counsel address the merits of all of the issues raised. *Id*. "Only after the issues have been briefed by new counsel may [we] address the merits of the issues raised." *Id*.

Our independent review of the record indicates that Steele, although indigent, was assessed attorney's fees in the judgment of conviction. Based on our independent review of the record, we find that this is an arguable ground for appeal. Because court-appointed counsel's brief does not address this arguable ground, we abate this appeal and remand this case to the trial court for the withdrawal of present counsel and the appointment of new counsel. A copy of the order appointing new counsel shall be forwarded to the Clerk within ten days of the date of this opinion. Only after new counsel is appointed and the issue identified in this opinion, as well as any other issues that counsel wishes to advance in the brief on the merits, are addressed will we reach the merits of this appeal. Upon receipt of the appointment of new counsel, we will reinstate the appeal and new counsel will then have thirty days to file a brief unless a motion for extension for good cause is filed and granted by this Court pursuant to the Rules of Appellate Procedure.

PER CURIAM

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Appeal abated
Order issued and filed July 27, 2011
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