



NUMBER 13-09-00629-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

JOSE ABRAHAM GUERRERO,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 24th District Court
of Victoria County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Benavides
Memorandum Opinion by Justice Rodriguez**

Appellant Jose Abraham Guerrero appeals from his conviction for three counts of aggravated sexual assault. See TEX. PENAL CODE ANN. § 22.021(a)(1)(B)(iii)-(v), (2)(B) (Vernon Supp. 2010). Guerrero pleaded not guilty to the offense, and the jury convicted

him of all three counts. The jury sentenced Guerrero to ninety-nine years' incarceration for each count, and the sentences were ordered to run concurrently.

Concluding that Guerrero's appeal in this case "would be frivolous," counsel filed an *Anders* brief in which she reviewed the merits, or lack thereof, of the appeal. We affirm.

I. COMPLIANCE WITH *ANDERS V. CALIFORNIA*

Pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967), Guerrero's court-appointed appellate counsel has filed a brief with this Court, stating that she has "reviewed the transcript of the trial and exhibits introduced therein, as well as the district clerk's record" and in her professional opinion, "there are no reversible grounds of error." After discussing the testimony and argument at the guilt-innocence and punishment phases of the trial, three potential grounds for appeal, and the applicable law, counsel concludes that none of the discussed "potential issues . . . rose to the level of arguable grounds for appeal" and "that an appeal would be . . . wholly frivolous." See *In re Schulman*, 252 S.W.3d 403, 407 n.9 (Tex. Crim. App. 2008) (orig. proceeding) ("In Texas, an *Anders* brief need not specifically advance 'arguable' points of error if counsel finds none, but it must provide record references to the facts and procedural history and set out pertinent legal authorities.") (citing *Hawkins v. State*, 112 S.W.3d 340, 343-44 (Tex. App.—Corpus Christi 2003, no pet.)); *Stafford v. State*, 813 S.W.2d 503, 510 n.3 (Tex. Crim. App. 1991) (en banc).

In compliance with *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. [Panel Op.] 1978), Guerrero's counsel has carefully discussed why, under controlling authority,

there are no errors in the trial court's judgment. Counsel has informed this Court that she has: (1) examined the record and found no arguable grounds to advance on appeal, (2) served a copy of the reporter's and clerk's records, counsel's brief, and her motion to withdraw on Guerrero, and (3) informed Guerrero of his right to review the record and to file a pro se response.¹ See *Anders*, 386 U.S. at 744; *Stafford*, 813 S.W.2d at 510 n.3; see also *In re Schulman*, 252 S.W.3d at 409 n.23.

Guerrero filed with this Court two motions for extensions of time for filing his pro se response. We granted both extensions, and the last deadline for Guerrero's response was November 14, 2010. No pro se brief has been filed. See *In re Schulman*, 252 S.W.3d at 409.

II. INDEPENDENT REVIEW

Upon receiving an *Anders* brief, this Court must conduct a full examination of all the proceedings to determine whether the case is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). We have reviewed the entire record and counsel's brief, and we have found nothing that would arguably support an appeal. See *Bledsoe v. State*, 178 S.W.3d 824, 826-28 (Tex. Crim. App. 2005) ("Due to the nature of *Anders* briefs, by indicating in the opinion that it considered the issues raised in the briefs and reviewed the record for reversible error but found none, the court of appeals met the requirement of Texas Rule of Appellate Procedure 47.1."); *Stafford*, 813 S.W.2d at 509. Accordingly, we affirm the judgment of the trial court.

¹The Texas Court of Criminal Appeals has held that "the pro se response need not comply with the rules of appellate procedure in order to be considered. Rather, the response should identify for the court those issues which the indigent appellant believes the court should consider in deciding whether the case presents any meritorious issues." *In re Schulman*, 252 S.W.3d 403, 409 n.23 (Tex. Crim. App. 2008) (orig. proceeding) (quoting *Wilson v. State*, 955 S.W.2d 693, 696-97 (Tex. App.—Waco 1997, no pet.)).

III. MOTION TO WITHDRAW

In accordance with *Anders*, Guerrero's attorney has asked this Court for permission to withdraw as counsel for appellant. See *Anders*, 386 U.S. at 744; see also *In re Schulman*, 252 S.W.3d at 408 n.17 (citing *Jeffery v. State*, 903 S.W.2d 776, 779-80 (Tex. App.–Dallas 1995, no pet.) (noting that "[i]f an attorney believes the appeal is frivolous, he must withdraw from representing the appellant. To withdraw from representation, the appointed attorney must file a motion to withdraw accompanied by a brief showing the appellate court that the appeal is frivolous.") (citations omitted)). We grant counsel's motion to withdraw that was carried with the case on August 9, 2010. Within five days of the date of this Court's opinion, counsel is ordered to send a copy of the opinion and judgment to Guerrero and to advise Guerrero of his right to file a petition for discretionary review.² See TEX. R. APP. P. 48.4; see also *In re Schulman*, 252 S.W.3d at 412 n.35; *Ex parte Owens*, 206 S.W.3d 670, 673 (Tex. Crim. App. 2006).

NELDA V. RODRIGUEZ
Justice

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

Delivered and filed the 16th
day of December, 2010.

²No substitute counsel will be appointed. Should Guerrero wish to seek further review of this case by the Texas Court of Criminal Appeals, he must either retain an attorney to file a petition for discretionary review or file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days from the date of either this opinion or the last timely motion for rehearing that was overruled by this Court. See TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with this Court, after which it will be forwarded to the Texas Court of Criminal Appeals. See TEX. R. APP. P. 68.3; 68.7. Any petition for discretionary review should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. See TEX. R. APP. P. 68.4