



NUMBER 13-09-00680-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

ADOLFO GARCIA,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 117th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

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

On August 21, 2007, Adolfo Garcia pleaded guilty to the offense of burglary of a building, a state-jail felony. See TEX. PENAL CODE ANN. § 30.02(a), (c) (Vernon 2003). The trial court assessed punishment at eighteen months' imprisonment, suspended the sentence and imposed community supervision for three years, plus a \$1,000 fine and \$236

in court costs. On March 17, 2008, the State filed a motion to revoke, alleging various violations of the terms of Garcia's community supervision. Garcia pleaded "true" to failing to: (1) report on several occasions; (2) pay fines; (3) pay supervision fees; and (4) complete 100 hours of community service. Following a hearing, the trial court accepted Garcia's pleas of "true" and found those violations to be true. The trial court sentenced Garcia to eighteen months' imprisonment and ordered him to pay \$286.72 in court costs. Garcia appeals the revocation of his community supervision. We affirm.

I. ANDERS BRIEF

Pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967), Garcia's court-appointed appellate counsel has filed a brief with this Court, stating that his review of the record yielded no grounds or error upon which an appeal can be predicated. Though counsel presents "issues" in his brief, he concludes that these issues "lack merit and that any appeal in this case would be frivolous. See *id.* Counsel's brief meets the requirements of *Anders* as it presents a professional evaluation demonstrating why there are no arguable grounds to advance on appeal. See *In re Schulman*, 252 S.W.3d 403, 407 n.9 (Tex. Crim. App. 2008) ("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).

In compliance with *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. [Panel Op.] 1978), Garcia'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 he has: (1)

examined the record and found no arguable grounds to advance on appeal, (2) served a copy of the brief and counsel's motion to withdraw on Garcia, and (3) informed Garcia 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. More than an adequate period of time has passed, and Garcia has not filed a pro se response. See *In re Schulman*, 252 S.W.3d at 409.

II. INDEPENDENT REVIEW

Upon receiving an *Anders* brief, we 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 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.

III. MOTION TO WITHDRAW

In accordance with *Anders*, Garcia'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.

¹ The 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) (quoting *Wilson v. State*, 955 S.W.2d 693, 696-97 (Tex. App.—Waco 1997, no pet.)).

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. Within five days of the date of this Court’s opinion, counsel is ordered to send a copy of the opinion and judgment to Garcia and to advise him 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).

ROGELIO VALDEZ
Chief Justice

Do not publish.
TEX. R. APP. P. 47.2(b)
Delivered and filed the
21st day of October, 2010.

² No substitute counsel will be appointed. Should Garcia 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.