



NUMBER 13-17-00288-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

BENJAMIN SALAZAR,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

On appeal from the 36th District Court
of San Patricio County, Texas.

MEMORANDUM OPINION

**Before Justices Contreras, Longoria, and Hinojosa
Memorandum Opinion by Justice Longoria**

Appellant Benjamin Salazar pleaded guilty to possession of contraband in a correctional facility, a third-degree felony. See TEX. PENAL CODE ANN. § 38.11(d)(1) (West, Westlaw through 2017 1st C.S.). The trial court sentenced Salazar to ten years in the Institutional Division of the Texas Department of Criminal Justice. Salazar's counsel has filed an *Anders* brief. See *Anders v. California*, 386 U.S. 738, 744 (1967). We affirm.

I. *ANDERS* BRIEF

Salazar's appellate counsel has filed a motion to withdraw and a brief in support in which he states that he has diligently reviewed the entire record and has found no non-frivolous issues. See *id.* Counsel's brief meets the requirements of *Anders* as it presents a thorough, professional evaluation of the record showing why there are no arguable grounds for advancing an appeal. 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."); *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) and *Kelly v. State*, 436 S.W.3d 313, 319–22 (Tex. Crim. App. 2014), Salazar's counsel carefully discussed why, under controlling authority, there is no reversible error in the trial court's judgment. Salazar's counsel also informed this Court that he has: (1) notified Salazar that he has filed an *Anders* brief and a motion to withdraw, and that he provided Salazar with copies of both; (2) informed Salazar of his rights to file a pro se response and of his right to review the record preparatory to filing that response; (3) informed Salazar of his pro se right to seek discretionary review if we conclude that the appeal is frivolous; and (4) provided Salazar with a form motion for pro se access to the appellate record, lacking only Salazar's signature.¹ See *Anders*, 386 U.S. at 744; *Kelly*,

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.)).

436 S.W.3d at 319–20; *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 time has passed, and Salazar has not filed a pro se motion for access to the appellate record or a motion for extension of time to do so or a pro se brief.

II. INDEPENDENT REVIEW

Upon receiving an *Anders* brief, we must conduct a full examination of all the proceedings to determine whether the appeal is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). We have reviewed the record and counsel's brief and we have found no reversible error. See *Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005) (“Due to the nature of *Anders* briefs, by indicating in the opinion it considered the issues raised in the brief and reviewed the record for reversible error but found none, the court of appeals met the requirements of Texas Rule of Appellate Procedure 47.1.”); *Stafford*, 813 S.W.2d at 509.

III. MOTION TO WITHDRAW

In accordance with *Anders*, Salazar's appellate counsel has filed a motion to withdraw. 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.) (“If 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 opinion, counsel is ordered to send a copy of the opinion and judgment to Salazar

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).

IV. CONCLUSION

We affirm the trial court's judgment.

NORA L. LONGORIA
Justice

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

Delivered and filed the
2nd day of August, 2018.

² No substitute counsel will be appointed. Should appellant 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 or timely motion for en banc reconsideration that was overruled by this Court. See TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with the clerk of the Court of Criminal Appeals, see *id.* R. 68.3, and should comply with the requirements of Texas Rule of Appellate Procedure 68.4. See *id.* R. 68.4.