



NUMBER 13-17-00675-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

FLORENTINO AGUILAR JR.,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 156th District Court
of Bee County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Hinojosa, and Perkes
Memorandum Opinion by Justice Perkes**

A jury convicted appellant Florentino Aguilar of possession of a controlled substance, a second-degree felony, and the trial court sentenced him to twelve years' imprisonment. See TEX. HEALTH & SAFETY CODE ANN. § 481.115. Aguilar's court-appointed counsel has filed an *Anders* brief. See *Anders v. California*, 386 U.S. 738, 744 (1967). We affirm.

I. **ANDERS BRIEF**

Pursuant to *Anders*, Aguilar's court-appointed appellate counsel has filed a brief and a motion to withdraw with this Court, stating that her review of the record yielded no grounds of error upon which an appeal can be predicated. *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—Edinburg 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) and *Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014), Aguilar's counsel carefully discussed why, under controlling authority, there is no reversible error in the trial court's judgment. Counsel has informed this Court, in writing, that counsel has: (1) notified Aguilar that counsel has filed an *Anders* brief and a motion to withdraw; (2) provided Aguilar with a copy of the *Anders* brief and motion to withdraw; (3) informed Aguilar of his rights to review the record to file a pro se response and to seek discretionary review if this Court finds that the appeal is frivolous; and (4) provided Aguilar with a form motion for pro se access to the appellate record with instructions to file the motion in this Court. *See Anders*, 386 U.S. at 744; *Kelly*, 436 S.W.3d at 319; *Stafford*, 813 S.W.2d at 510 n.3; *see also In re Schulman*, 252 S.W.3d at 409 n.23. An adequate amount of time has passed, and Aguilar has not filed 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 case is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). We may determine the appeal is wholly frivolous and issue an opinion after reviewing the record and finding no reversible error. *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). Alternatively, if we determine that arguable grounds for appeal exist, we must remand for the appointment of new counsel to brief those issues. *Id.* at 827.

We have conducted an independent review of the record, including appellate counsel's brief, and find no reversible error. See *Anders*, 386 U.S. at 744; *Garner v. State*, 300 S.W.3d 763, 766 (Tex. Crim. App. 2009); *Bledsoe*, 178 S.W.3d at 826–27. We agree with counsel that the record presents no arguably meritorious grounds for review, and the appeal is frivolous. See *Garner*, 300 S.W.3d at 766; *Bledsoe*, 178 S.W.3d at 827.

III. MOTION TO WITHDRAW

In accordance with *Anders*, Aguilar's attorney has asked this Court for permission to withdraw as counsel. 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.) (“[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 this opinion and this Court's judgment to Aguilar and to advise him of his right to file a petition

for discretionary review.¹ 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

Counsel's motion to withdraw is granted. We affirm the trial court's judgment.

GREGORY T. PERKES
Justice

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

Delivered and filed the
11th day of July, 2019.

¹ No substitute counsel will be appointed. Should Aguilar 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 the Court. See TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with the clerk of the Texas Court of Criminal Appeals, see *id.* R. 68.3, and should comply with the requirements of the Texas Rule of Appellate Procedure 68.4. See *id.* R. 68.4.