



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

	§	No. 08-19-00042-CV
IN THE MATTER OF	§	Appeal from the
J.A.C., a Juvenile,	§	65th Judicial District Court
Appellant.	§	of El Paso County, Texas
	§	(TC# 1800828)

**OPINION**

The lower court found J.A.C., the juvenile Appellant in this proceeding, had engaged in the delinquent conduct of entering a habitation and committing and attempting to commit theft, in violation of Section 30.02(c)(2) of the Texas Penal Code. His counsel filed a notice of appeal from that determination, but later filed a motion to dismiss the appeal. Following several hearings below on whether Appellant ever actually wanted to appeal in the first place, and whether he has received effective assistance of counsel, new counsel was appointed who has filed an *Anders* brief. We affirm.

**I. FACTUAL SUMMARY**

Appellant was indicted for the delinquent conduct of Burglary of Habitation, a second-degree felony. Both Appellant and the State waived the right to be heard by a District Judge and

opted for transfer to a Juvenile Court Referee. On November 29, 2018, the Referee admonished Appellant and provided a detailed explanation of the jury trial procedure. Appellant acknowledged he understood his rights and waived a jury trial. Appellant signed a “Waiver, Stipulation, and Admission” form wherein he waived the right to a jury trial, stipulated that the State’s attorney could summarize the evidence that would have been submitted at trial, and admitted to the allegations against him.<sup>1</sup> He then pleaded true to the violation the State alleged. The Referee found Appellant engaged in delinquent conduct based on the pleadings on file, the plea of true, and the finding of true.

Prior to the disposition hearing, however, Appellant filed a motion to withdraw his stipulation and a motion for a new trial. In the motion, Appellant challenged the factual and legal

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<sup>1</sup> The hearing transcript reflects:

COURT: And I also did explain to you that you did have the right to a jury trial, but before you walked in you signed a piece of paper, you signed this piece of paper, saying that you did not want a jury trial. Is that correct?

COURT: Did you sign this piece of paper, sir?

J.A.R.: Yes.

COURT: Did you have any questions?

J.A.R.: No.

COURT: Did you have a chance to speak to your attorney about this? Did he go over all the paperwork with you?

J.A.R.: Yes.

COURT: Do you remember signing this piece of paper, it’s called a Waiver, Stipulation and Admission? Do you remember signing this?

J.A.R.: Yes.

COURT: Did you sign this piece of paper and plead true because you did commit the offense of -- What was it?

PROSECUTOR: Burglary of habitation.

COURT: -- burglary of habitation?

J.A.R.: Yes.

sufficiency to support the determination. The Referee held a hearing, at which Appellant also claimed that newly discovered evidence undermined the voluntariness of the stipulation he signed.<sup>2</sup> The Referee denied the motion and found Appellant's acknowledgement was voluntary. The Referee placed Appellant on probation until his 18th birthday under the terms and conditions of supervised probation.<sup>3</sup>

## II. FRIVOLOUS APPEAL

Appellant's court-appointed counsel has filed a brief in which he has concluded that the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v.*

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<sup>2</sup> The new evidence was that Appellant and/or his mother did not realize when admitting to the offense that it would jeopardize their public housing.

<sup>3</sup> This appeal has a somewhat tortured procedural history. The notice of appeal was filed on January 22, 2019. On May 13, 2019, Appellant's original trial and appellate counsel, Joshua Spencer, filed a motion to dismiss the appeal. We denied the motion to dismiss his appeal because it was not supported by a written waiver of the juvenile's right to appeal in accordance with Section 51.09 of the Texas Family Code. The Court gave Appellant ten days to correct the defect, but when the waiver was not filed, we required Appellant's brief to be filed no later than June 29, 2019. When no brief was filed, we sent notice to the trial court to conduct a hearing to determine if Appellant wished to continue the appeal.

On August 20, 2019, the trial court conducted that hearing. Appellant's counsel, Joshua Spencer, Appellant's mother, and the State's attorney attended. The trial court found that Appellant never wished to file an appeal; juvenile's mother had requested an appeal but no longer wished to pursue it; and that Appellant was no longer within the trial court's jurisdiction because he was removed from the mother's home and placed with the father in Juarez, Chihuahua, Mexico. The trial court held that Appellant had no desire to file an appeal, and Appellant's mother no longer wished to proceed with the appeal. The juvenile's probation was terminated on June 14, 2019.

We then reinstated the appellate timetables and provided counsel for the juvenile one more opportunity to file Appellant's brief because the hearing record did not show juvenile assented to dismiss the appeal. After a series of motions to extend the time to file a brief were filed and granted, on February 14, 2020, we remanded the case for an additional hearing to determine whether Appellant wished to pursue the appeal and whether he had been deprived of effective assistance of counsel. The trial court again found that Appellant never wished to file an appeal; juvenile's mother no longer wished to pursue the appeal; and that Appellant was no longer within the trial court's jurisdiction because he was removed from the mother's home and placed with the father in Juarez, Chihuahua, Mexico. At the hearing on March 5, 2020, Appellant's counsel, Joshua Spencer, indicated he would file an *Anders* brief with this Court.

After another series of motions to extend the time to file a brief with this Court, we issued a notice dated September 29, 2020, for the trial court to appoint new appellate counsel. On October 26, 2020, new counsel, Omar Carmona, entered as attorney of record for Appellant. After a four and half month period marked by additional motions to extend the time to file a brief, we again remanded the case to the trial court for a hearing. The hearing transcript informs us that Appellant's attorney used an investigator to try and locate Appellant and Appellant's mother without success. Appellant's counsel thereafter filed the *Anders* brief now before us.

*California*, 386 U.S. 738 (1967), by presenting a professional evaluation of the record demonstrating why, in effect, there are no arguable grounds to be advanced. See *In re Schulman*, 252 S.W.3d 403, 406 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.”); *High v. State*, 573 S.W.2d 807 (Tex.Crim.App. [Panel Op.] 1978). Counsel has notified the Court in writing of his motion to withdraw but not delivered a copy of counsel’s brief to Appellant. Counsel submits to the Court that Appellant and Appellant’s mother were not found after hiring an investigator to locate them. Based on the record, Appellant was advised of his right to appeal<sup>4</sup> and was provided ample opportunity to appeal by this Court. Appellant has not filed a pro se brief.

After carefully reviewing the record and counsel’s brief, we conclude that the appeal is wholly frivolous and without merit. Further, we find nothing in the record that might arguably support the appeal. We grant appellate counsel’s motion to withdraw in accordance with *Anders v. California*.

## II. CONCLUSION

We affirm the trial court’s judgment.

JEFF ALLEY, Justice

June 7, 2021

Before Rodriguez, C.J., Palafox, and Alley, JJ.

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<sup>4</sup> On January 17, 2019, during the disposition hearing, the trial court addressed an appeal.

COURT: And so I’m going to see you back in a couple of months to see how everything is going. I want to know what CPS -- what services they’re providing as well. And that will be on March the 13th at 8:00. You do have the right to appeal my decision. That means if you’re not in agreement make sure you speak to your attorney. In addition, you do have the right to have your record sealed and that can be done on your 19th birthday.