



ADOLFO ALVAREZ-TARANGO,	§	No. 08-20-00103-CR
Appellant,	§	Appeal from the
v.	§	143rd District Court
THE STATE OF TEXAS,	§	of Ward County, Texas
Appellee.	§	(TC# 15-09-5653-CRW)

MEMORANDUM OPINION

Appellant, Adolfo Alvarez-Tarango, appeals the trial court's revocation of community supervision. Appellant's counsel filed an *Anders* brief asserting the appeal is frivolous and without merit. We affirm and grant counsel's motion to withdraw.¹

BACKGROUND

Appellant was convicted of bail jumping and failure to appear pursuant to TEX.PENAL CODE ANN. § 38.10. Appellant was sentenced to 10 years in the Institutional Division-T.D.C.J.

¹ We note that trial counsel was also appointed to represent Appellant in this appeal. At the time of the appointment by the trial court, neither the trial court nor counsel could have known that an *Anders* brief would be filed. We note that some of our sister courts have adopted a blanket rule that it is inappropriate for appointed counsel who also served as trial counsel to file an *Anders* brief. *Chandler v. State*, 988 S.W.2d 828 (Tex.App.—Dallas 1999, no pet.). *But see Velasquez v. State*, 12 S.W.3d 584, 585 (Tex.App.—San Antonio 2000, pet. ref'd)(presuming trial counsel is competent to act as appellate counsel unless the record establishes a conflict); *Hernandez v. State*, No. 07-14-00417-CR, 2015 WL 4594110, at *2 n.4 (Tex.App.—Amarillo July 30, 2015, no pet.)(mem. op., not designated for publication)(citing *Sam v. State*, 467 S.W.3d 685, 687–88 (Tex.App.—Houston [14th Dist.] 201, no pet.); *Maldonado v. State*, No. 07-17-00190-CR, 2017 WL 4784938, at *1 (Tex.App.—Amarillo Oct. 18, 2017, no pet.)(mem. op., not designated for publication). Under the facts of this appeal, we do not consider it to be judicially prudent to abate this appeal and remand the cause to the trial court for the appointment of new counsel.

which was probated for 5 years. On August 27, 2019, the State filed its initial motion to revoke Appellant's community supervision after Appellant was found to be working and residing in New Mexico. On March 3, 2020, the State amended their motion. In their amended motion, the State alleged Appellant failed to (1) obey all orders of the court and his Community Supervision Officer; (2) report in June 2019 through January 2020; (3) obtain permission to change his place of residence; (4) remain in the supervising county; (5) pay monthly restitution for court and attorney fees; (6) pay a monthly community supervision fee; (7) submit an affidavit of inability to pay; and (8) pay a monthly probationary fine. At the hearing, Appellant entered a plea of true to the State's fifth, sixth, and eighth paragraphs and not true to the remaining allegations.

Appellant traveled to New Mexico for work. Appellant testified he was issued a work permit from Ward County to reside and work in New Mexico. Appellant believed the work permit would inform him of when he was required to report, and because it did not, he understood he was not required to report for the period he was working in New Mexico. Appellant alleges the work permit was issued in May of 2019; however, his file contains no record of a work permit issued in 2019. Appellant also alleges he submitted an affidavit of inability to pay in April of 2019, but there is no record of the affidavit in his record. Following a hearing, the trial court revoked Appellant's community supervision.

Appellant now appeals alleging the trial court abused its discretion by revoking Appellant's community supervision. In bringing this appeal, Appellant's counsel has filed an *Anders'* brief in support of a motion to withdraw. Counsel asserts Appellant freely admitted to several of the alleged violations in the State's motion to revoke community supervision. As a result, Counsel concedes there are no arguable issues of reversible error in this case. Appellant has provided a *pro se* brief alleging his community supervision officer lied regarding whether his file contained a work permit.

Standard of Review

We review a trial court's decision to revoke community supervision under an abuse of discretion standard. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex.Crim.App. 1984). This Court defers to the factual determinations of the trial court and examines the record in the light most favorable to the lower court's ruling. *McConnell v. State*, No. 08-02-00255-CR, 2003 WL 22016809, at *1 (Tex.App.—El Paso Aug. 26, 2003, no pet.). During a revocation proceeding, the State has the burden of proving that the probationer violated a condition of their community supervision. *Cobb v. State*, 851 S.W.2d 871, 874 (Tex.Crim.App. 1993). If any violation is supported by the evidence, the revocation order must be upheld. *Scott v. State*, No. 08-13-00036-CR, 2015 WL 479256, at *2 (Tex.App.—El Paso Feb. 4, 2015, no pet.); *Cardona*, 665 S.W.2d at 493-94. Further a plea of true to any alleged violation is sufficient to uphold a trial court's revocation order. *Scott*, 2015 WL 479256, at *1. A trial court has abused its discretion when revoking community supervision if the State fails to prove any allegations. *Cardona*, 665 S.W.2d at 494.

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. Counsel has reviewed the record and Appellant's pleas of true to the allegations in the State's motion to revoke community supervision which he concludes forecloses any basis for reversal of Appellant's conviction. The brief meets the requirements of *Anders v. 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. 1978). Counsel has notified the Court in writing that he has delivered a copy of counsel’s brief and the motion to withdraw to Appellant, and he has advised Appellant of his right to review the record, file a *pro se* brief, and to seek discretionary review. *Kelly v. State*, 436 S.W.3d 313, 318-20 (Tex.Crim.App. 2014)(setting forth duties of counsel). Counsel also provided Appellant with a form motion for access to the appellate record.

Appellant was provided access to the record and has filed a *pro se* brief in response. We are not permitted to address the merits of issues raised by Appellant’s *pro se* brief. *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex.Crim.App. 2005). Instead, this Court must conclude whether (1) Appellant’s appeal is wholly frivolous and contains no reversible error; or (2) there are arguable grounds for appeal and the cause should be remanded to the trial court. *Id.* Any attempt by this Court to address the merits raised in an Appellant’s *pro se* response would deprive Appellant of the meaningful assistance of his counsel. *Id.* This Court’s sole duty in this case is to review and consider the issues raised in Appellant’s brief for reversible error. The sole issue raised by Appellant is the alleged untruthfulness of his community supervision officer. We find Appellant’s issue presents no arguable ground for appeal.

We have carefully reviewed the record, counsel’s brief, and Appellant’s *pro se* brief. We agree that the appeal is wholly frivolous and without merit, and we find nothing in the record that might arguably support the appeal. A further discussion of the issues advanced in Appellant’s *pro se* brief would add nothing to the jurisprudence of the state.

CONCLUSION

The judgment of the trial court is affirmed.

July 26, 2021

YVONNE T. RODRIGUEZ, Chief Justice

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

(Do Not Publish)