



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

ARMANDO BARRERA, JR.,	§	No. 08-20-00117-CR
Appellant,	§	Appeal from the
v.	§	244th District Court
THE STATE OF TEXAS,	§	of Ector County, Texas
Appellee.	§	(TC# C-19-1105-CR)
	§	

OPINION

Appellant, Armando Barrera, Jr., appeals¹ his conviction of driving while intoxicated (“DWI”), a third-degree felony. *See* TEX. PENAL CODE ANN. §§ 49.04, 49.09(b)(2) (defining enhanced offenses of driving while intoxicated). Counsel for Appellant filed a brief in compliance with *Anders v. California*, 386 U.S. 738, 744 (1967) and *Gainous v. State*, 436 S.W.2d 137 (Tex. Crim. App. 1969). Appellant also filed a *pro se* brief asserting legal insufficiency of the evidence, violation of due process, and ineffective assistance of counsel. We affirm.

FACTUAL SUMMARY

Appellant was indicted for driving while intoxicated with two previous convictions, a third-

¹ This case was transferred from the Eleventh Court of Appeals of Texas, our sister court in Eastland. We decide it in accordance with the precedent of that court. TEX. R. APP. P. 41.3.

degree felony. A jury found Appellant guilty of driving while intoxicated, third or more as charged in the indictment. Appellant stipulated to two previous convictions of driving while intoxicated. The trial court sentenced Appellant to ten years in the Institutional Division of the Texas Department of Criminal Justice, receiving credit for time served, a fine of \$50, reimbursement fees of \$85, and court costs of \$290.

Analysis Pursuant to Anders v. California

Appellant's court-appointed counsel filed a motion to withdraw, along with a brief stating that no meritorious issues of appeal exists that could conceivably support reversal of the trial court's judgment. Counsel's brief presents a professional evaluation of the record demonstrating why, in effect, there are no arguable grounds to be advanced. *See Anders*, 386 U.S. at 744; *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). Additionally, counsel notified the Court in writing that he not only delivered a copy of the brief to Appellant, but he also advised him of his right to review the record, file a *pro se* brief, and of his right to seek discretionary review with the Court of Criminal Appeals. *Kelly v. State*, 436 S.W.3d 313, 318-20 (Tex. Crim. App. 2014) (setting forth duties of counsel). In addition, counsel also stated he provided Appellant with a motion requesting access to the appellate record in compliance with *Kelly*. *Id.* Accordingly, we conclude that Appellant's counsel has complied with the requirements of *Anders* and *Kelly*. *See Anders*, 386 U.S. at 744; *Kelly*, 436 S.W.3d at 318-20.

Barrera filed a *pro se* brief in response. The Court of Criminal Appeals has held that we need not address the merits of issues raised in *Anders* briefs or *pro se* responses. *Bledsoe v. State*,

178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). Rather, an appellate court may determine either: (1) “that the appeal is wholly frivolous and issue an opinion explaining that it has reviewed the record and finds no reversible error[;]” or (2) “that arguable grounds for appeal exist and remand the cause to the trial court so that new counsel may be appointed to brief the issues.” *Id.*

We have determined that this appeal is wholly frivolous. We reviewed the appellate record, and we agree with counsel’s conclusion that no arguable issues support the appeal. Therefore, we find it unnecessary to order appointment of new counsel to re-brief the appeal. *Cf. Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991).

CONCLUSION

We affirm the trial court’s judgment.

GINA M. PALAFOX, Justice

May 20, 2021

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

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