



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

CASEY MARTIN JONES,	§	No. 08-21-00007-CR
Appellant,	§	Appeal from the
v.	§	104th District Court
THE STATE OF TEXAS,	§	of Taylor County, Texas
Appellee.	§	(TC# 22035-B)

MEMORANDUM OPINION

Appellant, Casey Martin Jones, appeals from a judgment revoking his community supervision for possession with intent to promote child pornography, a second-degree felony.¹ See TEX.PENAL CODE ANN. § 43.26(g). 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 ineffective assistance of counsel for failure to object to polygraph evidence, not filing requested motions for documents pertaining to an alleged probation violation, and use of inappropriate words. We affirm.

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.

I. FACTUAL SUMMARY

In 2019, the State indicted Appellant for possession with intent to promote child pornography.² Pursuant to a plea bargain, the trial court deferred making an adjudication of guilt and placed Appellant on deferred adjudication for ten years with a requirement to register as a sex offender. The trial court assessed a fine of \$1,500. The State later filed a motion to revoke alleging that Appellant failed to complete ordered conditions and violated multiple terms of the community supervision.³ During the revocation hearing, Appellant entered a plea of true on all violations in the State's motion. The trial court found the allegations true, granted the State's motion, and adjudicated Appellant guilty for the offense of possession with intent to promote child pornography. The trial court sentenced Appellant to eight years in prison with no fine.

II. FRIVOLOUS APPEAL

Appellant's court-appointed counsel filed a motion to withdraw, along with a brief stating that no meritorious issues of appeal exist 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. [Panel Op.] 1978). Additionally, counsel notified the Court in writing that she delivered a copy of the brief and motion to withdraw to Appellant, and she has advised

² Appellant was also charged for possession of child pornography, a third-degree felony, but plea admonishments included only one offense.

³ The State waived Allegations 6, 7, 8, and 9.

Appellant of his right to review the record and file a *pro se* brief. *Kelly v. State*, 436 S.W.3d 313, 318-20 (Tex.Crim.App. 2014) (setting forth duties of counsel). Counsel stated she provided Appellant with a copy of the clerk's record and reporter's record in compliance with *Kelly*. *Id.* Counsel also stated she provided Appellant with a draft Motion to Extend Time to File for his pro se brief and a draft Motion for Access to Appellate Record.

Jones filed a pro se brief in response. The reviewing court has two choices when faced with both an *Anders* brief and a pro se brief. *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex.Crim.App. 2005). 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.* Merits of the issues are not addressed in *Anders* briefs or pro se responses. *Id.*

After carefully reviewing the record, counsel's brief, and Appellant's pro se brief, we agree with counsel and conclude that the appeal is wholly frivolous. Further, we find nothing in the record that might arguably support the appeal and find appointment of new counsel to re-brief the appeal unnecessary. *Cf. Stafford v. State*, 813 S.W.2d 503, 511 (Tex.Crim.App. 1991) (en banc). We grant appellate counsel's motion to withdraw in accordance with *Anders v. California*.

III. MOTION TO WITHDRAW

Finding Appellant's counsel has substantially complied with the requirements of *Anders* and *Kelly*, we grant counsel's motion to withdraw. *See Anders*, 386 U.S. at 744; *Kelly*, 436 S.W.3d at 318-20. However, we note counsel's motion to withdraw fails to mention whether she informed Jones of his right to seek discretionary review in the Texas Court of Criminal Appeals if this Court finds that the appeal is frivolous. *See Kelly*, 436 S.W.3d at 318-20; *Ex Parte Owens*, 206 S.W.3d

670, 674 n.28 (Tex.Crim.App. 2006); *Meza v. State*, 206 S.W.3d 684, 689 n.23 (Tex.Crim.App. 2006).

Therefore, 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 Jones and to advise him of his right to file a petition for discretionary review. *See* TEX.R.APP.P. 48.4; *see also In re Schulman*, 252 S.W.3d at 412 n.35; *Owens*, 206 S.W.3d at 673.

No substitute counsel will be appointed. Should Jones 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 must 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 that is overruled by this Court. *See* TEX.R.APP.P. 68.2. Any petition for discretionary review must be filed in the Court of Criminal Appeals. *See* TEX.R.APP.P. 68.3. Any petition for discretionary review must comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. *See* TEX.R.APP.P. 68.4.

IV. CONCLUSION

We affirm the trial court's judgment.

JEFF ALLEY, Justice

August 20, 2021

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

(Do Not Publish)