

Opinion filed January 20, 2017



In The

# Eleventh Court of Appeals

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No. 11-16-00083-CR

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**JACOB ANDREW WALLING, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 238th District Court  
Midland County, Texas  
Trial Court Cause No. CR45673**

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## **MEMORANDUM OPINION**

Based upon open pleas of guilty, the trial court convicted Jacob Andrew Walling of the offenses of aggravated robbery and aggravated assault on a public servant, both first-degree felonies. The trial court held a hearing as to punishment, made an affirmative deadly weapon finding in each cause, found the enhancement allegation to be true, and assessed Appellant's punishment at confinement for thirty years for each offense, to run concurrently. We dismiss the appeal.

Appellant's court-appointed counsel has filed a motion to withdraw. The motion is supported by a brief in which counsel professionally and conscientiously examines the record and applicable law and concludes that the appeal is frivolous. Counsel has provided Appellant with a copy of the brief, the motion to withdraw, the reporter's record, and a form motion for pro se access to the appellate record. Counsel also advised Appellant of his right to review the record and file a response to counsel's brief. A response has not been filed.<sup>1</sup>

Court-appointed counsel has complied with the requirements of *Anders v. California*, 386 U.S. 738 (1967); *Kelly v. State*, 436 S.W.3d 313 (Tex. Crim. App. 2014); *In re Schulman*, 252 S.W.3d 403 (Tex. Crim. App. 2008); *Stafford v. State*, 813 S.W.2d 503 (Tex. Crim. App. 1991); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. [Panel Op.] 1978); *Currie v. State*, 516 S.W.2d 684 (Tex. Crim. App. 1974); *Gainous v. State*, 436 S.W.2d 137 (Tex. Crim. App. 1969); and *Eaden v. State*, 161 S.W.3d 173 (Tex. App.—Eastland 2005, no pet.). In addressing an *Anders* brief and pro se response, a court of appeals may only determine (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. *Schulman*, 252 S.W.3d at 409; *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). Following the procedures outlined in *Anders* and *Schulman*, we have independently reviewed the record, and we agree that the appeal is without merit and should be dismissed. *Schulman*, 252 S.W.3d at 409.

We note that counsel has the responsibility to advise Appellant that he may file a petition for discretionary review with the clerk of the Texas Court of Criminal

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<sup>1</sup>This court granted Appellant more than thirty days in which to exercise his right to file a response to counsel's brief.

Appeals seeking review by that court. TEX. R. APP. P. 48.4 (“In criminal cases, the attorney representing the defendant on appeal shall, within five days after the opinion is handed down, send his client a copy of the opinion and judgment, along with notification of the defendant’s right to file a *pro se* petition for discretionary review under Rule 68.”). Likewise, this court advises Appellant that he may file a petition for discretionary review pursuant to TEX. R. APP. P. 68.

The motion to withdraw is granted, and the appeal is dismissed.

PER CURIAM

January 20, 2017

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

Panel consists of: Wright, C.J.,  
Willson, J., and Bailey, J.