

Affirmed as modified; Opinion Filed May 25, 2018.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

**No. 05-17-00865-CR
No. 05-17-00866-CR**

**GUILLERMO DE LA GARZA, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 5
Dallas County, Texas
Trial Court Cause Nos. F14-40490-L. F14-41239-L**

MEMORANDUM OPINION

Before Justices Lang-Miers, Evans, and Schenck
Opinion by Justice Evans

Guillermo De La Garza waived a jury and pleaded nolo contendere to two aggravated sexual assault of a child offenses. After finding appellant guilty in each case, the trial court sentenced appellant to fifteen years' imprisonment in the first case and thirty years' imprisonment in the second case. On appeal, appellant's attorney filed a brief in which she concludes the appeals are wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967). The brief presents a professional evaluation of the record showing why, in effect, there are no arguable grounds to advance. See *High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. [Panel Op.] 1978) (determining whether brief meets requirements of *Anders*). Counsel delivered a copy of the brief to appellant. We advised appellant of his right to file a pro se response,

but he did not file a pro se response. *See Kelly v. State*, 436 S.W.3d 313, 319–21 (Tex. Crim. App. 2014) (noting appellant has right to file pro se response to *Anders* brief filed by counsel).

We have reviewed the record and counsel’s brief. *See Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005) (explaining appellate court’s duty in *Anders* cases). We agree the appeals are frivolous and without merit. We find nothing in the record that might arguably support the appeals.

Although not arguable issues, counsel asks us to correct several errors in the trial court’s judgments. In cause no. 05-17-00865-CR, the judgment erroneously recites that appellant pleaded guilty to the offense and plea bargain terms of “15 years TDCJ, Fine \$0.” The record shows appellant entered an open nolo contendere plea and there was no plea bargain agreement.

In cause no. 05-17-00866-CR, the judgment erroneously recites the offense as “sex abuse continuous/Ch14,” that appellant pleaded guilty to the offense, and plea bargain terms of “30 years TDCJ, Fine \$0.” The record shows appellant was initially indicted for the offense of continuous sexual abuse of a child younger than fourteen years. At trial, however, the trial court granted the State’s motion to strike words from the indictment, making the charged offense aggravated sexual assault of a child pursuant to penal code section 22.021. TEX. PENAL CODE ANN. § 22.021(a)(1)(B) (West Supp. 2017). Moreover, appellant entered an open nolo contendere plea to the offense of aggravated sexual assault of a child, and there was no plea bargain agreement.

Accordingly, on our own motion, in cause no. 05-17-00865-CR, we modify the section of the judgment entitled “Plea to Offense” to show “Nolo Contendere,” and the section entitled “Terms of Plea Bargain” to show “Open.” TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993) (courts of appeals have authority to modify a judgment); *Estrada v. State*, 334 S.W.3d 57, 63–64 (Tex. App.—Dallas 2009, no pet.) (same). In cause no. 05-17-00866-CR, we modify the section of the judgment entitled “Offense for which Defendant

Convicted” to show “Aggravated Sexual Assault Child,” the section entitled “Statute for Offense” to show “22.021 Penal Code,” the section entitled “Plea to Offense” to show “Nolo Contendere,” and the section entitled “Terms of Plea Bargain” to show “Open.”

As modified, we affirm the trial court’s judgments.

/David Evans/
DAVID EVANS
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

GUILLERMO DELAGARZA, Appellant

No. 05-17-00865-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 5, Dallas County, Texas
Trial Court Cause No. F14-40490-L.
Opinion delivered by Justice Evans.
Justices Lang-Miers and Schenck
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

The section entitled "Plea to Offense" is modified to show "Nolo Contendere."

The section entitled "Terms of Plea Bargain" is modified to show "Open."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered this 25th day of May, 2018.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

GUILLERMO DELAGARZA, Appellant

No. 05-17-00866-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 5, Dallas County, Texas
Trial Court Cause No. F14-41239-L.
Opinion delivered by Justice Evans.
Justices Lang-Miers and Schenck
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

The section entitled "Offense for which Defendant Convicted" is modified to show "Aggravated Sexual Assault Child."

The section entitled "Statute for Offense" is modified to show "22.021 Penal Code."

The section entitled "Plea to Offense" is modified to show "Nolo Contendere."

The section entitled "Terms of Plea Bargain" is modified to show "Open."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered this 25th day of May, 2018.