

Affirm and Opinion Filed November 6, 2020



In The  
Court of Appeals  
Fifth District of Texas at Dallas

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No. 05-19-01315-CR

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ROBERT WISE, Appellant

V.

THE STATE OF TEXAS, Appellee

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On Appeal from the 204th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. F-1876422-Q

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**MEMORANDUM OPINION**

Before Justices Molberg, Carlyle, and Browning  
Opinion by Justice Molberg

In this *Anders*<sup>1</sup> case, counsel for appellant, Robert Wise, seeks leave to withdraw as counsel because, in his professional opinion, there are no meritorious issues on which Wise could possibly prevail in this appeal. We agree. Because this appeal is frivolous, we grant counsel's motion and affirm the trial court's judgment.

**BACKGROUND**

Wise has appealed a judgment sentencing him to ten years' confinement in the Texas Department of Criminal Justice's Institutional Division for failure to

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<sup>1</sup> See *Anders v. California*, 386 U.S. 738, 744–45 (1967).

register as a sex offender under TEX. PENAL CODE § 62.102. Wise was charged with the offense by a November 7, 2018 indictment. On December 20, 2018, Wise pleaded guilty, and as a result of that plea and a related plea agreement, the court entered an order of deferred adjudication, deferring guilt and placing Wise on community supervision for a period of six years, during which he was subject to certain terms and conditions of community supervision.

On September 20, 2019, the State filed a motion to revoke probation and adjudicate guilt, alleging Wise failed to satisfy four of those terms and conditions—specifically, paragraphs J, L, N, and Q—by failing to do the following: pay certain supervision and urinalysis fees (paragraphs J and N, respectively); complete community service hours (paragraph L); and participate in and continue counseling through an approved registered sex offender treatment provider (paragraph Q).

The court heard the State's motion on October 16, 2019. In the hearing, Wise waived a jury and pleaded true to the allegations in the State's motion. Over no objection, the court admitted Wise's signed judicial confession and stipulation of evidence, admitting to the allegations in the State's motion. Various witnesses testified, including Wise's probation officer, two police officers involved in arresting him for the alleged violations of probation, and Wise. Wise's probation officer testified about the violations alleged in the State's motion, and she and the two police officers testified about the difficulties with Wise that officers encountered when executing his arrest warrant. Wise explained why he had behaved the way he did

when officers arrested him, acknowledged being behind on community service, and answered the trial court's questions about the sex offender training he had attended but had not completed.

At the conclusion of the hearing, the trial court adjudicated guilt and announced Wise's sentence. The court entered a judgment adjudicating guilt and sentencing Wise to ten years' confinement.

Wise appealed that judgment and obtained new court-appointed counsel, who subsequently filed the *Anders* motion and brief discussed here.

### ANALYSIS

After court-appointed appellate counsel files an *Anders* brief asserting that no arguable grounds for appeal exist, we independently examine the record to determine whether the appeal is "wholly frivolous." *Anders*, 386 U.S. at 744. An appeal is wholly frivolous when it lacks any basis in law or in fact; an argument is frivolous if it cannot conceivably persuade the court. *Crowe v. State*, 595 S.W.3d 317, 319 (Tex. App.—Dallas 2020, no pet.).

According to counsel's *Anders* motion and brief, counsel has reviewed the entire record and believes there are no meritorious issues on which Wise could possibly prevail in this appeal. Counsel has certified that he "(1) informed [Wise] of the motion to withdraw and attendant *Anders* brief, (2) provided [Wise] with the requisite copies . . . while notifying him of his various pro se rights, and (3) supplied him with a form motion for pro se access to the appellate record (and the mailing

address for the court of appeals), to be filed within ten days, so that he may timely effectuate that right, if [Wise] so chooses.” *See Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014).

While counsel’s certification does not explain whether the “various pro se rights” he notified Wise about included his right to file a pro se response in our Court or to seek discretionary review should we declare his appeal frivolous, *see id.*, Wise has been informed of both rights through the Court’s own communications. After counsel’s filing of his *Anders* motion and brief, by letter, we advised Wise of the filings and provided Wise with a copy of both. We also advised Wise in that letter that he had a right to file a pro se response in our Court and a right to seek discretionary review should we declare his appeal frivolous. Wise filed no response.

Based on our review of the record here, Wise’s appeal lacks any basis in law or in fact, making his appeal wholly frivolous. *See Crowe*, 595 S.W.3d at 319. Accordingly, we affirm the trial court’s judgment and grant counsel’s motion to withdraw.

/Ken Molberg/  
KEN MOLBERG  
JUSTICE

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

**JUDGMENT**

ROBERT WISE, Appellant

No. 05-19-01315-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. F-1876422-Q.  
Opinion delivered by Justice  
Molberg. Justices Carlyle and  
Browning participating.

Based on the Court's opinion of this date, the judgment of the trial court is  
**AFFIRMED.**

Judgment entered this 6<sup>th</sup> day of November, 2020.