

Opinion issued December 18, 2008



In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00291-CR

REVAT RENE VARA, Appellant

v.

STATE OF TEXAS, Appellee

**On Appeal from the 208th District Court
Harris County, Texas
Trial Court Cause No. 1061075**

MEMORANDUM OPINION

The jury found appellant, Revat Rene Vara, guilty of the third-degree felony

offense of driving while intoxicated (“DWI”).¹ After appellant pleaded “true” to two enhancement paragraphs, the jury assessed punishment at 25 years in prison.

Appellant’s court-appointed counsel has filed a motion to withdraw and a brief pursuant to *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967). Appellant filed a pro se response, raising the following points: (1) he received ineffective assistance of counsel on appeal; (2) he received ineffective assistance of counsel at trial; and (3) the evidence is legally and factually insufficient to support his conviction.²

We affirm.

***Anders* Procedure**

Pursuant to *Anders*, when court-appointed counsel files a motion to withdraw and files a brief in which she concludes that there are no arguable grounds for appeal, we review the record and make an independent determination. *See id.* (emphasizing that reviewing court—and not counsel—determines, after full examination of proceedings, whether case is “wholly frivolous”); *accord Bledsoe v. State*, 178 S.W.3d 824, 826 (Tex. Crim. App. 2005); *Mitchell v. State*, 193 S.W.3d 153, 155

¹ See TEX. PENAL CODE ANN. § 49.04(a) (Vernon 2003); TEX. PENAL CODE ANN. § 49.09(b)(2) (Vernon Supp. 2008).

² The State waived its opportunity to file a reply to the arguments presented in appellant’s pro se response.

(Tex. App.—Houston [1st Dist.] 2006, no pet.). We consider any pro se response appellant may file to the *Anders* brief, but we do not rule on the ultimate merits of his response. *Bledsoe*, 178 S.W.3d at 826–27; *Mitchell*, 193 S.W.3d at 155–56. If we determine from our independent review of the entire record that the appeal is wholly frivolous, we may affirm the trial court’s judgment by issuing an opinion in which we explain that we have reviewed the record and have found no reversible error. *Bledsoe*, 178 S.W.3d at 826–27; *Mitchell*, 193 S.W.3d at 156.

If we find arguable grounds for appeal, we abate the appeal, remand the case to the trial court, and allow the court-appointed attorney to withdraw. *Bledsoe*, 178 S.W.3d at 826–27; *Mitchell*, 193 S.W.3d at 156. The trial court then must either appoint another attorney to present all arguable grounds for appeal or allow the defendant to proceed pro se if he desires. *Bledsoe*, 178 S.W.3d at 826–27; *Mitchell*, 193 S.W.3d at 156.

Analysis

In this case, the brief filed by appellant’s counsel meets the minimum *Anders* requirements by presenting a professional evaluation of the record and stating why there are no arguable grounds for reversal on appeal. *See Gainous v. State*, 436 S.W.2d 137, 138 (Tex. Crim. App. 1969). Appellant’s counsel indicates that she has thoroughly reviewed the record. Based on this review, counsel states that she “is

unable to find any errors which she, in good faith, can urge warranting a reversal of this conviction. Counsel is aware that she had a duty to advance arguable grounds of error.” *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *Mitchell*, 193 S.W.3d at 154. In her *Anders* brief, counsel discusses the evidence adduced at the trial, supplies us with references to the record, and provides us with citation to legal authorities. *Cf. High v. State*, 573 S.W.2d 807, 811 (Tex. Crim. App. 1978). The brief also reflects that counsel delivered a copy of the brief to appellant and informed him of his right to file a response, which he has done. *See Stafford v. State*, 813 S.W.2d 503, 510 (Tex. Crim. App. 1991).

We have reviewed counsel’s brief and appellant’s pro se response, and we have conducted an independent examination of the record. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *Bledsoe*, 178 S.W.2d 826–27; *Mitchell*, 193 S.W.3d at 155. Based on this review, we conclude that no reversible error exists in the record and that the appeal is wholly frivolous.

Conclusion

We affirm the judgment of the trial court and grant the motion of appellant's counsel to withdraw.³

Laura Carter Higley
Justice

Panel consists of Chief Justice Radack and Justices Nuchia and Higley.

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

³ Appellant's counsel maintains a duty to inform appellant of the result of this appeal and of the fact that he may, on his own, pursue discretionary review in the Court of Criminal Appeals. *See Bledsoe v. State*, 178 S.W.3d 824, 827 & n. 6 (Tex. Crim. App. 2005); *Stephens v. State*, 35 S.W.3d 770, 771–72 (Tex. App.—Houston [1st Dist.] 2000, no pet.).