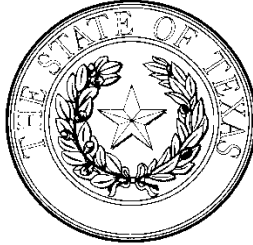


Opinion issued August 12, 2010.



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-09-00297-CR  
NO. 01-09-00298-CR  
NO. 01-09-00299-CR

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ANTHONY M. BARRIOS, Appellant  
V.  
THE STATE OF TEXAS, Appellee

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On Appeal from the 25th District Court  
Colorado County, Texas  
Trial Court Case Nos. 08-080, 08-110, and 08-111

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**MEMORANDUM OPINION**

Appellant, Anthony M. Barrios, pleaded no contest, and the trial court, pursuant to a plea agreement, assessed punishment at 18 months' confinement for the offense of evading arrest, 18 months' confinement for the offense of possession of marihuana, and at 20 years' confinement for the offense of possession with

intent to deliver a controlled substance, group one. *See* TEX. PENAL CODE ANN. § 38.04 (Vernon 2003); TEX. HEALTH & SAFETY CODE ANN. §§ 481.112(d), 481.121(b)(3) (Vernon 1993). The trial court certified appellant’s right to appeal its rulings on appellant’s pretrial motions.

Appellant’s court-appointed counsel has filed an *Anders* brief in which he states that there are no arguable grounds to support an appeal. *See Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967). Appellant has filed a pro se response to his counsel’s *Anders* brief in which he asserts (1) that the trial court erred in denying his motion to suppress the DVD of the arrest; and (2) that the trial court erred in denying his motion for continuance to investigate the DVD.

We affirm the judgment and grant appellant’s counsel’s motion to withdraw.

### **ANDERS PROCEDURE**

When we receive an *Anders* brief from a defendant’s court-appointed attorney asserting no arguable grounds for appeal exist, we must determine that issue independently by conducting our own review of the entire record. *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400 (emphasizing that reviewing court and not counsel determines, after full examination of proceedings, whether case is “wholly frivolous”); *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). In conducting our review, we consider any pro se response that the defendant files to

his appointed counsel's *Anders* brief. *See Bledsoe v. State*, 178 S.W.3d 824, 826-28 (Tex. Crim. App. 2005).

Our role in this *Anders* appeal is limited to determining whether arguable grounds for appeal exist. *See id.* at 827. If we determine that arguable grounds for appeal exist, we must abate the appeal and remand the case to the trial court to allow the court-appointed attorney to withdraw. *See id.* The trial court must then either appoint another attorney to present all arguable grounds for appeal or, if the defendant wishes, allow the defendant to proceed pro se. *See id.* We do not rule on the ultimate merits of the issues raised by appellant in his pro se response. *See id.* If we determine that there are arguable grounds for appeal, appellant is entitled to have new counsel address the merits of the issues raised. *See id.* "Only after the issues have been briefed by new counsel may [we] address the merits of the issues raised." *Id.*

If, on the other hand, we determine, from our independent review of the entire record, that an 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. *See id.* at 826-27. Although we may issue an opinion explaining why the appeal lacks arguable merit, we are not required to do so. *See Garner v. State*, 300 S.W.3d 763, 767 (Tex. Crim. App. 2009). An appellant may challenge a holding that there are no arguable grounds for

appeal by filing a petition for discretionary review in the Court of Criminal Appeals. *See Bledsoe*, 178 S.W.3d at 827 & n.6.

### 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 he has thoroughly reviewed the record. Based on this review, counsel states that he "could find no reversible error and has concluded this appeal is frivolous and without merit." *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *Mitchell v. State*, 193 S.W.3d 153, 154 (Tex. App.—Houston [1st Dist.] 2006, no pet.). In his *Anders* brief, counsel discusses the pre-trial proceedings, 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) (explaining the necessary work product of an effective advocate in the appellate process). 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 appellant has done. *See Stafford*, 813 S.W.2d at 510.

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, 97 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 appointed counsel's motion to withdraw.<sup>1</sup> We deny all pending motions.

### **PER CURIAM**

Panel consists of Chief Justice Radack and Justices Bland and Sharp.

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

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<sup>1</sup> Appointed counsel still has a duty to inform appellant of the result of these appeals and that he may, on his own, pursue discretionary review in the Texas Court of Criminal Appeals. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005).