

Opinion issued February 17, 2011.



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

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NOS. 01-09-01044-CR and  
01-09-01045-CR

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**HENRY ALEXIS MEDINA, Appellant**  
V.  
**STATE OF TEXAS, Appellee**

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**On Appeal from the 351st District Court  
Harris County, Texas  
Trial Court Case Nos. 1180204 and 1180205**

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**MEMORANDUM OPINION**

After committing a hit-and-run accident that caused the death of a pedestrian, appellant Henry Alexis Medina entered guilty pleas to the third-degree felony offenses of failure to stop and render assistance and tampering with or

fabricating physical evidence without an agreed recommendation as to punishment.<sup>1</sup> See TEX. TRANSP. CODE ANN. § 550.021 (Vernon Supp. 2010); TEX. PENAL CODE ANN. § 37.09(d)(1) (Vernon Supp. 2010). The trial court considered a pre-sentence investigation (PSI) and other information presented at the sentencing hearing and assessed a punishment of ten years' confinement.

Medina's counsel on appeal has submitted a brief stating his professional opinion that the appeal is without merit and that there are no arguable grounds for reversal. See *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967). Medina filed a pro se response. In that response, Medina contends that the sentence imposed by the trial court violates the prohibition against cruel and unusual punishment imposed by the Eighth Amendment of the United States Constitution. U.S. CONST. amend VIII. Medina also complains that trial counsel rendered ineffective assistance during the sentencing hearing. *Strickland v. Washington*, 466 U.S. 686, 688, 104 S. Ct. 2052, 2064 (1984); *Thompson v. State*, 9 S.W.3d 808, 812 (Tex. Crim. App. 1999). We have reviewed the record and, having found no reversible error, we affirm Medina's conviction and sentence.

### **Background**

While Daniel Kelly was walking along the road during the early morning hours one morning in August 2008, Medina struck him with his car. Medina did

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<sup>1</sup> The trial court cause numbers assigned to these offenses were 1180204 and 1180205, respectively.

not stop to assist Kelly, who died from his injuries. Instead, Medina drove home to his apartment complex. Investigating Houston Police Department Officer K. Mitchell testified that, with the license plate number recorded by another officer near the time of the hit-and-run, he determined that the car that struck Kelly belonged to Medina. The following morning, Officer Mitchell and his partner, Officer R. Miller, went to Medina's apartment.

The officers found Medina's car in the parking lot, covered with a tarpaulin. Medina allowed the officers into his apartment and led him to the hood of the car, which Medina had removed and placed in his closet. The damage to the hood was consistent with the accident.

The officers arrested Medina. After Medina pleaded guilty to both offenses, the trial court ordered a PSI and held a punishment hearing. During the hearing, Officer Mitchell testified to the results of his investigation. Kelly's friends and family members also testified to how he had touched their lives and the impact that his death had on them. Medina's friends and mother testified to Medina's character in his defense.

### ***Anders Procedure***

The brief submitted by Medina's court-appointed counsel states his professional opinion that there are no arguable grounds for reversal on appeal and that any appeal would, therefore, lack merit. *See Anders*, 386 U.S. at 744, 87 S. Ct.

at 1400. Counsel’s brief 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). Counsel sent a copy of the brief to Medina, requested permission to withdraw from the case, and notified Medina of his right to review the record and to file a pro se response.

When we receive an *Anders* brief from a defendant’s court-appointed attorney who asserts that no arguable grounds for appeal exist, we must determine that issue independently by conducting our own review of the entire record. *See 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, which includes reviewing Medina’s pro se response, is limited to determining whether arguable grounds for appeal exist. *See id.* at 827. If we determine that arguable grounds for appeal exist, we abate the appeal and remand the case to the trial court to allow the court-appointed attorney to withdraw. *See id.* The trial court then either appoints another attorney to

present all arguable grounds for appeal or, if the defendant wishes, allows the defendant to proceed pro se. *See id.* We do not rule on the ultimate merits of the issues raised by Medina in his pro se response. *See id.* If we determine that there are arguable grounds for appeal, Medina 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 the appeal is wholly frivolous, we may affirm the trial court’s judgment. *See id.* at 826–28. Medina may challenge the holding that there are no arguable grounds for appeal in a petition for discretionary review filed in the Court of Criminal Appeals. *See id.* at 827 & n.6.

In accordance with *Anders* and *Bledsoe*, we have reviewed the record, Medina’s appointed counsel’s *Anders* brief, and Medina’s pro se response to that brief. We conclude that no arguable ground for reversible error exists. Having reached that conclusion, we affirm the judgment of the trial court and grant Medina’s appointed counsel’s motion to withdraw.<sup>2</sup>

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<sup>2</sup> Appointed appellate counsel still has a duty to inform Medina of the result of this appeal and 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); *Ex parte Wilson*, 956 S.W.2d 25, 27 (Tex. Crim. App. 1997); *Stephens v. State*, 35 S.W.3d 770, 771–72 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

## **Conclusion**

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

Jane Bland  
Justice

Panel consists of Justices Keyes, Higley, and Bland.

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