

Opinion issued June 2, 2016



In The
Court of Appeals
For The
First District of Texas

NO. 01-15-00474-CR

ADRIAN LOBE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 240th District Court
Fort Bend County, Texas
Trial Court Case No. 11-DCR-058553**

MEMORANDUM OPINION

Appellant, Adrian Lobe, appeals a judgment revoking probation and sentencing him to two years' incarceration in the Texas Department of Criminal Justice, Institutional Division. Lobe's counsel on appeal has filed a motion to withdraw, along with an *Anders* brief stating that the record presents no reversible

error and therefore the appeal is without merit and is frivolous. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). We grant counsel's motion to withdraw and affirm the trial court's judgment.

An attorney has an ethical obligation to refuse to prosecute a frivolous appeal. *In re Schulman*, 252 S.W.3d 403, 406 (Tex. Crim. App. 2008). If an appointed attorney finds a case to be wholly frivolous, his obligation to his client is to seek leave to withdraw. *Id.* Counsel's obligation to the appellate court is to assure it, through an *Anders* brief, that, after a complete review of the record, the request to withdraw is well-founded. *Id.*

Counsel's brief reflects that he delivered a copy of the brief to Lobe and informed him of his right to examine the appellate record and to file a response. *See Schulman*, 252 S.W.3d at 408. Lobe did not request access to the record and did not file a pro se response, even though we granted a motion for extension of time to file one. It has been more than 30 days since the pro se response was due *See id.* at 409 n.23 (adopting 30-day period for response).

Counsel's brief meets the *Anders* requirements in that it presents a professional evaluation of the record. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *see also High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978). Counsel supplies us with references to the record and provides us with citation to legal authorities. Counsel indicates that he has thoroughly reviewed the record and that

he is unable to advance any grounds of error that warrant reversal. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *Mitchell v. State*, 193 S.W.3d 153, 155 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

We have independently reviewed the entire record, and we conclude that no reversible error exists in the record, that there are no arguable grounds for review, and that therefore the appeal is frivolous. *See Anders*, 386 U.S. at 744, 87 S. Ct. at 1400; *Garner v. State*, 300 S.W.3d 763, 766–67 (Tex. Crim. App. 2009) (explaining that frivolity is determined by considering whether there are “arguable grounds” for review); *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005) (emphasizing that reviewing court—and not counsel—determines, after full examination of proceedings, whether the appeal is wholly frivolous); *Mitchell*, 193 S.W.3d at 155 (reviewing court must conduct independent review of entire record to determine that no arguable grounds for appeal exist). 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.

We grant counsel’s motion to withdraw¹ and affirm the trial court’s judgment. Attorney Calvin D. Parks must immediately send the notice required by Texas Rule

¹ Appointed counsel still has a duty to inform appellant of the result of this appeal and that he may, on his own, pursue discretionary review in the Texas Court of

of Appellate Procedure 6.5(c) and file a copy of that notice with the Clerk of this Court. *See* TEX. R. APP. P. 6.5(c).

PER CURIAM

Panel consists of Justices Keyes, Brown, and Huddle.

Do not publish. Tex. R. App. P. 47.2(b).

Criminal Appeals. *See Bledsoe v. State*, 178 S.W.3d 824, 827 (Tex. Crim. App. 2005).