

Opinion issued January 25, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-16-00939-CR

MICHAEL DIAZ, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 338th District Court
Harris County, Texas
Trial Court Case No. 1464791

MEMORANDUM OPINION

Appellant, Michael Diaz, pleaded guilty to the third-degree felony offense of violation of a protective order. In accordance with appellant's plea bargain with the State, the trial court entered an order deferring adjudication of guilt and placing him on three years of community supervision and imposing a \$300 fine. The State

subsequently moved to adjudicate. After a hearing, the trial court signed a judgment adjudicating appellant guilty of the offense and the trial court assessed punishment at three years' incarceration in the Institutional Division of the Texas Department of Criminal Justice. Appellant timely filed a notice of appeal.

Appellant's appointed counsel on appeal has filed a motion to withdraw, along with a brief, stating that the record presents no reversible error and the appeal is without merit and is frivolous. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967).

Counsel's brief meets the *Anders* requirements by presenting a professional evaluation of the record and supplying us with references to the record and legal authority. 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 indicates that he has thoroughly reviewed the record and 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.).

Counsel advised appellant of his right to access the record and provided him with a form motion for access to the record. Counsel further advised appellant of his right to file a pro se response to the *Anders* brief. Appellant did not request access to the record and did not file a pro se response.

We have independently reviewed the entire record in this appeal, and we conclude that no reversible error exists in the record, there are no arguable grounds for review, and the appeal is frivolous. *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 appeal is wholly frivolous); *Garner v. State*, 300 S.W.3d 763, 767 (Tex. Crim. App. 2009) (reviewing court must determine whether arguable grounds for review exist); *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005) (same); *Mitchell*, 193 S.W.3d at 155 (reviewing court determines whether arguable grounds exist by reviewing entire record). We note that an appellant may challenge a holding that there are no arguable grounds for appeal by filing a petition for discretionary review in the Texas Court of Criminal Appeals. *See Bledsoe*, 178 S.W.3d at 827 & n.6.

We affirm the judgment of the trial court and grant counsel’s motion to withdraw.¹ Attorney Eusebio Chavo Pastrano must immediately send appellant the required notice and file a copy of the notice with the Clerk of this Court. *See TEX. R. APP. P. 6.5(c)*. We dismiss any pending motions as moot.

PER CURIAM

Panel consists of Justices Jennings, Massengale, and Caughey.

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 Criminal Appeals. *See Ex Parte Wilson*, 956 S.W.2d 25, 27 (Tex. Crim. App. 1997).

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