

*Court of Appeals*  
*Fourth Court of Appeals District of Texas*  
*San Antonio*



**MEMORANDUM OPINION**

No. 04-12-00075-CR

Heiberto **HERNANDEZ**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 226th Judicial District Court, Bexar County, Texas  
Trial Court No. 2011CR7651  
Honorable Sid L. Harle, Judge Presiding

Opinion by: Catherine Stone, Chief Justice

Sitting: Catherine Stone, Chief Justice  
Karen Angelini, Justice  
Marialyn Barnard, Justice

Delivered and Filed: September 5, 2012

**AFFIRMED**

After a bench trial, Heiberto Hernandez was found guilty of aggravated assault with a deadly weapon, and the trial court sentenced Hernandez to eight years imprisonment. Hernandez's court-appointed attorney filed a brief containing a professional evaluation of the record in accordance with *Anders v. California*, 386 U.S. 738 (1967). Counsel concludes that the appeal has no merit. Hernandez was provided with a copy of the brief and informed of his right to review the record and file his own brief. *See Nichols v. State*, 954 S.W.2d 83, 85-86 (Tex.

App.—San Antonio 1997, no pet.); *Bruns v. State*, 924 S.W.2d 176, 177 n.1 (Tex. App.—San Antonio 1996, no pet.). Hernandez filed a *pro se* brief asserting several issues.

After reviewing the record, counsel’s brief, and Hernandez’s *pro se* brief, we conclude that the appeal is frivolous and without merit. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005).<sup>1</sup> The judgment of the trial court is affirmed. Appellate counsel’s motion to withdraw is granted. *Nichols*, 954 S.W.2d at 86; *Bruns*, 924 S.W.2d at 177 n.1. No substitute counsel will be appointed. Should Hernandez wish to seek further review of this case by the Texas Court of Criminal Appeals, Hernandez must either retain an attorney to file a petition for discretionary review or Hernandez must file a *pro se* petition for discretionary review. Any petition for discretionary review must be filed within thirty days from the later of: (1) the date of this opinion; or (2) the date the last timely motion for rehearing is overruled by this court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed in the Texas Court of Criminal Appeals. *See* TEX. R. APP. P. 68.3. Any petition for discretionary review should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 68.4.

Catherine Stone, Chief Justice

DO NOT PUBLISH

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<sup>1</sup>If an *Anders* brief is filed in an appeal and the appellant elects to file a *pro se* brief, the Texas Court of Criminal Appeal has instructed that this court has two choices. *Bledsoe*, 178 S.W.2d at 826-27. We may “determine that the appeal is wholly frivolous and issue an opinion explaining that [the court] has reviewed the record and finds no reversible error.” *Id.* “Or, [we] may determine that arguable grounds for appeal exist and remand the cause to the trial court so that new counsel may be appointed to brief the issues.” *Id.* at 827. “Only after the issues have been briefed by new counsel may [this court] address the merits of the issues raised.” *Id.* If we “were to review the case and issue an opinion which addressed and rejected the merits raised in a *pro se* response to an *Anders* brief, then [the] [a]ppellant would be deprived of the meaningful assistance of counsel.” *Id.*