



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

**MEMORANDUM OPINION**

No. 04-16-00493-CR

Jose **GUTIERREZ**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 224th Judicial District Court, Bexar County, Texas  
Trial Court No. 2013CR11673  
Honorable Pat Priest, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Marialyn Barnard, Justice  
Rebeca C. Martinez, Justice  
Irene Rios, Justice

Delivered and Filed: September 27, 2017

**AFFIRMED**

A jury found Jose Gutierrez guilty of the offense of murder. Based upon the jury's recommendation, the trial court sentenced Gutierrez to life imprisonment and a \$10,000 fine. Because we conclude this appeal is frivolous and without merit, we affirm the trial court's judgment.

Gutierrez's court-appointed appellate counsel filed a brief with this court representing that he conducted a professional evaluation of the record and determined there are no arguable grounds to be advanced on Gutierrez's behalf. *See Anders v. California*, 386 U.S. 738, 744 (1967). With

citations to the record and legal authority, counsel explains why he concluded the appeal is without merit. Counsel states he reviewed the indictment and evidence adduced at trial. The brief meets the requirements of *Anders* as it presents a professional evaluation showing why there is no basis to advance an appeal. *Id.* at 744–45; *Stafford v. State*, 813 S.W.2d 503, 509–10, 510 n.3 (Tex. Crim. App. 1991); *High v. State*, 573 S.W.2d 807, 812–13 (Tex. Crim. App. [Panel Op.] 1978).

Counsel provided Gutierrez with copies of counsel’s *Anders* brief and motion to withdraw and informed Gutierrez of his right to review the record and file his own brief. *See Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014). Additionally, counsel advised Gutierrez to file a motion in this court if he wished to review the appellate record and enclosed a form for that purpose. *See id.*; *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.). Thereafter, we set deadlines for Gutierrez to file any motion for the record and any *pro se* brief. Gutierrez filed a *pro se* brief,<sup>1</sup> which we have reviewed.

After reviewing the record, counsel’s *Anders* brief, and Gutierrez’s *pro se* brief, we conclude there is no reversible error and agree this appeal is frivolous and without merit. Accordingly, the judgment of the trial court is affirmed, and appellate counsel’s request to withdraw is granted.<sup>2</sup> *Nichols*, 954 S.W.2d at 86; *Bruns*, 924 S.W.2d at 177 n.1.

Irene Rios, Justice

DO NOT PUBLISH

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<sup>1</sup> Although titled a brief, Gutierrez’s Brief in Opposition to counsel’s *Anders* brief is actually a motion for appointment of counsel on appeal and provides no substantive issues for review.

<sup>2</sup> No substitute counsel will be appointed. Should Gutierrez wish to seek further review of this case by the Texas Court of Criminal Appeals, Gutierrez must either retain an attorney to file a petition for discretionary review or Gutierrez 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.