



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00581-CR

Justin LUNA,
Appellant

v.

The STATE of Texas,
Appellee

From the 187th Judicial District Court, Bexar County, Texas
Trial Court No. 2012CR9367
Honorable Joey Contreras, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: November 13, 2019

MOTION TO WITHDRAW GRANTED; AFFIRMED

In April 2013, Justin C. Luna pled no contest to a charge of indecency with a child by exposure in exchange for the State's recommendation that adjudication be deferred. Pursuant to the plea agreement, the trial court deferred adjudication and placed Luna on community supervision for a period of five years. The State filed motions to adjudicate in 2014 and 2016 that resulted in orders modifying the terms of Luna's supervision and extending the period of supervision for three additional years. Then, in February 2018, the State filed a motion to adjudicate guilt, alleging Luna violated the conditions of his community supervision by

committing the offense of sexual assault. Luna pled not true to the allegation. After a contested hearing, at which Luna and four other witnesses testified, the trial court found the allegation that Luna committed sexual assault to be true. The trial court adjudicated Luna guilty of the original offense and sentenced him to ten years in prison and a \$1,500 fine.

Luna's court-appointed appellate attorney filed a motion to withdraw and a brief in which he concludes this appeal is frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967), *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. [Panel Op.] 1978), and *Gainous v. State*, 436 S.W.2d 137 (Tex. Crim. App. 1969). In addition, counsel sent copies of the brief and motion to withdraw to Luna, informed Luna of his rights in compliance with the requirements of *Kelly v. State*, 436 S.W.3d 313 (2014), and provided Luna a form to request access to the appellate record. This court notified Luna of the deadline for him to file a pro se brief. Luna did not request access to the appellate record and did not file a pro se brief.

This court has reviewed counsel's brief and has conducted an independent and thorough review of the record. We conclude there are no arguable grounds for appeal presented by the record and the appeal is wholly frivolous. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). We therefore grant the motion to withdraw filed by Luna's counsel and affirm the trial court's judgment. *See id.*; *Nichols v. State*, 954 S.W.2d 83, 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.).¹

Luz Elena D. Chapa, Justice

DO NOT PUBLISH

¹ No substitute counsel will be appointed. Should Luna wish to seek further review of this case by the Texas Court of Criminal Appeals, he must either retain an attorney to file a petition for discretionary review or file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days after either this opinion is rendered or the last timely motion for rehearing or motion for en banc reconsideration is overruled by this court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with the clerk of the Court of Criminal Appeals. *See id.* R. 68.3. Any petition for discretionary review must comply with the requirements of rule 68.4 of the Texas Rules of Appellate Procedure. *See id.* R. 68.4.