



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00212-CR

Sean Leroy **HAYS**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 25th Judicial District Court, Guadalupe County, Texas
Trial Court No. 17-0232-CR-A
Honorable William D. Old III, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Luz Elena D. Chapa, Justice
Beth Watkins, Justice

Delivered and Filed: November 4, 2020

AFFIRMED

Sean Leroy Hays appeals his convictions, following a jury trial, for one count of assault causing bodily injury, family violence, with a previous family violence conviction, and one count of assault impeding breath, family violence, with a previous family violence conviction. Hays'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. Counsel provided Hays with a copy of the brief and informed him 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.). Hays filed a pro se brief asserting several issues.

After reviewing the record, counsel’s brief, and Hays’s pro se brief, we conclude that the appeal is frivolous and without merit.¹ *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). The judgment of the trial court is affirmed. Appellate counsel’s request 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 Hays wish to seek further review of this case by the Texas Court of Criminal Appeals, Hays must either retain an attorney to file a petition for discretionary review or Hays 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.

Sandee Bryan Marion, Chief Justice

DO NOT PUBLISH

¹ 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.*