

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00345-CR

KASEY ERIN KANTAK, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 410th District Court
Montgomery County, Texas
Trial Cause No. 08-09-08946 CR**

MEMORANDUM OPINION

A jury convicted Kasey Erin Kantak of capital murder. Tex. Penal Code Ann. § 19.03(a)(2) (West Supp. 2010). The State did not seek the death penalty, and the trial court imposed the mandatory sentence of life imprisonment without parole. Tex. Penal Code Ann. § 12.31(a) (West Supp. 2010); Tex. Code Crim. Proc. Ann. art. 37.071, § 1 (West Supp. 2010). Appellant filed a timely notice of appeal. We affirm the judgment of conviction.

On appeal, Kantak's counsel filed a brief that presents counsel's professional evaluation of the record and concludes that the appeal is frivolous. *See Anders v.*

California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); *see also High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). On May 20, 2010, we granted an extension of time for the appellant to file a *pro se* brief. Kantak filed a *pro se* response alleging insufficiency of the evidence, ineffective assistance of counsel, issues regarding admissibility of certain evidence, inapplicability of the law of parties, and insufficient time for counsel to prepare for trial. The State did not file a response brief.

In *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005), the Court of Criminal Appeals held that we need not address the merits of issues raised in *Anders* briefs or *pro se* responses. An appellate court may determine either (1) “that the appeal is wholly frivolous and issue an opinion explaining that it has reviewed the record and finds no reversible error”; or (2) “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 826-27. The Court held in *Garner v. State*, 300 S.W.3d 763, 764 (Tex. Crim. App. 2009) that “when a court of appeals finds no issues of arguable merit in an *Anders* brief, it may explain why the issues have no arguable merit.” *Id.* “The provision of analysis [by the appellate court] does not necessarily imply that there is arguable merit” that would necessitate appointment of counsel to brief the issues. *Id.* at 767.

We have independently examined the clerk’s record, the reporter’s record, the *Anders* brief, and the *pro se* brief in this case, and we agree that no arguable issues support an appeal. *Id.* at 766-67. We determine that the appeal is wholly frivolous. We

find it unnecessary to order appointment of new counsel to re-brief the appeal. *Compare Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). We affirm the trial court's judgment.¹

AFFIRMED.

DAVID GAULTNEY
Justice

Submitted on November 18, 2010
Opinion Delivered February 2, 2011
Do Not Publish

Before McKeithen, C.J., Gaultney and Horton, JJ.

¹Kantak may challenge our decision in this case by filing a petition for discretionary review. Tex. R. App. P. 68. Additionally, relief in appropriate cases for claims of ineffective assistance of counsel is generally available through an application for a writ of habeas corpus. *See Thompson v. State*, 9 S.W.3d 808, 814-15 (Tex. Crim. App. 1999).