



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-16-00024-CR**

DAVID PEEK

APPELLANT

V.

THE STATE OF TEXAS

STATE

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FROM THE 396TH DISTRICT COURT OF TARRANT COUNTY  
TRIAL COURT NO. 1428351R

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**MEMORANDUM OPINION<sup>1</sup>**  
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Appellant David Peek appeals his third-degree felony conviction and ten-year sentence for stalking.

Appellant was charged in a single indictment with two counts of stalking, each enhanced by a prior stalking conviction. See Tex. Penal Code Ann. § 42.072 (West Supp. 2016). The indictment also contained a repeat offender notice. Appellant pled guilty to the second count in exchange for the State's

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<sup>1</sup>See Tex. R. App. P. 47.4.

agreement to waive the first count, the enhancement, and the repeat offender notice, thus reducing the punishment range and maximum confinement and creating a charge-bargain agreement between the State and appellant. See *Shankle v. State*, 119 S.W.3d 808, 813–14 (Tex. Crim. App. 2003); see also Tex. Penal Code Ann. §§ 12.42(a), (b) (West Supp. 2016) (increasing punishment for a third-degree felony to a second-degree felony and punishment for a second-degree felony to a first-degree felony if defendant has previously been convicted of a felony); 42.072(b)(1) (elevating stalking from third-degree felony to a second-degree felony if defendant has previously been convicted of an offense under section 42.072 or under the law of another state that contains elements substantially similar to the elements of an offense under section 42.072). After a punishment hearing, the trial court found appellant guilty and assessed his punishment at ten years' confinement.

Appellant's court-appointed appellate counsel has filed a motion to withdraw and a brief in support of that motion. Counsel avers that in his professional opinion, the appeal is frivolous. Counsel's brief and motion meet the requirements of *Anders v. California* by presenting a professional evaluation of the record and demonstrating why there are no arguable grounds for relief. See 386 U.S. 738, 87 S. Ct. 1396 (1967). In compliance with *Kelly v. State*, the record demonstrates that appellant was notified of counsel's motion to withdraw, provided a copy of the motion and brief, informed of his right to file a pro se response, and informed of his right to seek discretionary review should this court

hold the appeal is frivolous, and concrete measures were taken to facilitate appellant's review of the appellate record. See 436 S.W.3d 313, 319 (Tex. Crim. App. 2014). This court informed appellant that he could file a pro se response, which appellant has done. The State submitted a letter informing this court that it would not be providing briefing but reserved the right to do so if this court found an arguable ground for appeal.

Once an appellant's court-appointed attorney files a motion to withdraw on the ground that the appeal is frivolous and fulfills the requirements of *Anders*, this court is obligated to undertake an independent examination of the record. See *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991); *Mays v. State*, 904 S.W.2d 920, 922–23 (Tex. App.—Fort Worth 1995, no pet.). Only then may we grant counsel's motion to withdraw. See *Penson v. Ohio*, 488 U.S. 75, 82–83, 109 S. Ct. 346, 351 (1988).

We have carefully reviewed the record, counsel's brief, and appellant's pro se response, and we agree with counsel that this appeal is wholly frivolous and without merit; we find nothing in the record that might arguably support the appeal.<sup>2</sup> See *Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005);

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<sup>2</sup>Although this case involved a plea bargain, because the trial court counseled appellant that he had the right of appeal and because the certification of appellant's right of appeal indicates that he has the right of appeal, we conclude that the trial court gave appellant permission to appeal. See Tex. R. App. P. 25.2(a)(2), (d); *Aguirre v. State*, No. 02-12-00509-CR, 2013 WL 6046121, at \*1 (Tex. App.—Fort Worth Nov. 14, 2013, no pet.) (mem. op., not designated for publication); *Craven v. State*, Nos. 02-11-00089-CR, 02-11-00090-CR, 2012 WL 2036449, at \*1 (Tex. App.—Fort Worth June 7, 2012, pet. ref'd) (mem. op., not designated for publication).

*see also Meza v. State*, 206 S.W.3d 684, 685 n.6 (Tex. Crim. App. 2006). We grant counsel's motion to withdraw, and we affirm the trial court's judgment.

/s/ Bill Meier  
BILL MEIER  
JUSTICE

PANEL: LIVINGSTON, C.J.; DAUPHINOT and MEIER, JJ.

DO NOT PUBLISH  
Tex. R. App. P. 47.2(b)

DELIVERED: August 25, 2016