

NO. 07-04-0281-CR  
IN THE COURT OF APPEALS  
FOR THE SEVENTH DISTRICT OF TEXAS  
AT AMARILLO  
PANEL D  
JULY 11, 2005

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ROKE ACOSTA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

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FROM THE 242<sup>ND</sup> DISTRICT COURT OF SWISHER COUNTY;

NO. B3798-0307; HONORABLE ED SELF, JUDGE

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Before QUINN, C.J., and REAVIS and CAMPBELL, JJ.

### **MEMORANDUM OPINION**

Appellant Roke Acosta appeals his conviction for the felony offense of indecency with a child. We agree with appointed counsel's conclusion that the record fails to show any meritorious issue which would support the appeal and affirm the trial court's judgment.

Appellant was charged in an indictment alleging he engaged in sexual contact with a child younger than seventeen. He pled not guilty and was tried before a jury which found him guilty. The jury assessed punishment at twenty years confinement in the Institutional Division of the Texas Department of Criminal Justice and a fine of \$10,000.00. Appellant's

appointed trial counsel timely perfected appeal and new counsel was appointed to represent appellant on appeal.

Appellant's counsel has filed a motion to withdraw and a brief in support pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), in which he represents he has searched the record and in his professional opinion, under the controlling authorities and facts of this case, there is no reversible error or legitimate grounds for appeal. Counsel has informed appellant by letter of his right to review the trial record and to file a pro se brief. *Johnson v. State*, 885 S.W.2d 641, 645 (Tex.App.–Waco 1994, pet. ref'd). By letter this court also notified appellant of his opportunity to submit a response to the *Anders* brief and motion to withdraw filed by his counsel. Appellant has not filed a brief or other response.

In conformity with the standards set out by the United States Supreme Court, we will not rule on the motion to withdraw until we have independently examined the record. *Nichols v. State*, 954 S.W.2d 83, 86 (Tex.App.–San Antonio 1997, no pet.). If this court determines the appeal has merit, we will remand it to the trial court for appointment of new counsel. *See Stafford v. State*, 813 S.W.2d 503, 511 (Tex.Crim.App. 1991).

In a supplemental brief counsel discusses some of the evidence presented at trial and objections made. Appellant was described as a “curandero” or “witch doctor” by his son and daughter.<sup>1</sup> Trial counsel objected to admission of the report of an expert witness and testimony concerning appellant’s prosecution for practicing medicine without a license.

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<sup>1</sup>Appellant’s long time housekeeper denied he was a curandero or witch doctor.

Appellant waived any objection to the report when it was later offered into evidence, and evidence of his prior prosecution for practicing medicine without a license was admitted elsewhere without objection. Those complaints have not been preserved for appeal. See *Penry v. State*, 691 S.W.2d 636, 655 (Tex.Crim.App. 1985) (admission of the same evidence elsewhere without objection cures any error).

Our review of counsel's brief and the record convinces us that appellate counsel conducted a thorough review of the record. We have also made an independent examination of the entire record to determine whether there are any arguable grounds which might support the appeal. See *Stafford*, 813 S.W.2d at 511. We agree it presents no meritorious grounds for review. We grant counsel's motion to withdraw and affirm the judgment of the trial court.

James T. Campbell  
Justice

Do not publish.