

NO. 07-04-0311-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL D
JUNE 8, 2005

DAVID J. BAZAN, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM THE 140TH DISTRICT COURT OF LUBBOCK COUNTY;
NO. 2003-402960; HONORABLE JIM BOB DARNELL, JUDGE

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

MEMORANDUM OPINION

Appellant David J. Bazan appeals his conviction and sentence for possession of a controlled substance (cocaine) with intent to deliver, in an amount of at least four grams but less than 200 grams. 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, while represented by counsel, pled *nolo contendere* to the charged offense. The plea was an open plea. Appellant was admonished regarding the effect of his plea, both orally and in writing. The trial court accepted appellant's plea, found that the evidence established that he was guilty of the charged offense, found him guilty and sentenced him to 12 years incarceration in the Texas Department of Criminal Justice, Institutional Division.

Counsel for appellant has filed a motion to withdraw and a brief in support pursuant to Anders v. California, 386 U.S. 738, 744-745, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), in which he certifies that 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 upon which a non-frivolous appeal can arguably be predicated. Counsel thus concludes that the appeal is frivolous. See High v. State, 573 S.W.2d 807, 813 (Tex.Crim.App. 1978).

Counsel has certified that a copy of the Anders brief and motion to withdraw have been served on appellant, and that counsel has appropriately advised appellant of his right to review the record and file a *pro se* response. 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 response.

We have made an independent examination of the record to determine whether there are any non-frivolous grounds on which an appeal could arguably be founded. See

Penson v. Ohio, 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988); Stafford v. State, 813 S.W.2d 503, 511 (Tex.Crim.App. 1991). If this court determines the appeal has merit, we will remand it to the trial court for appointment of new counsel. Stafford, 813 S.W.2d 511.

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. Id. We agree with counsel that there are no meritorious grounds for review.

Accordingly, counsel's motion to withdraw is granted and we affirm the judgment of the trial court.

James T. Campbell
Justice

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