



IN THE
TENTH COURT OF APPEALS

No. 10-12-00140-CR

STEVEN BARKER,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 52nd District Court
Coryell County, Texas
Trial Court No. 20797

MEMORANDUM OPINION

Steven Barker made an open plea of guilty to the offense of aggravated kidnapping. At the subsequent sentencing hearing, Barker pleaded true to the enhancement paragraph, and the trial court sentenced him to life imprisonment. Barker appealed.

Barker's originally appointed appellate counsel filed a motion to withdraw and an *Anders* brief, asserting that he diligently reviewed the appellate record and that, in his opinion, the appeal was frivolous. *See Anders v. California*, 386 U.S. 738, 87 S.Ct.

1396, 18 L.Ed.2d 493 (1967). Barker filed a *pro se* response; however, he did not raise any arguable issues. Subsequently, Barker's originally appointed counsel was allowed to withdraw by the trial court because of a conflict of interest, and the trial court appointed Barker new appellate counsel.¹ Barker's new appellate counsel nevertheless filed her own motion to withdraw and adopted the *Anders* brief of former counsel. Although informed of his right to do so, Barker filed no further response to the *Anders* brief.

In an *Anders* case, we must, "after a full examination of all the proceedings, ... decide whether the case is wholly frivolous." *Id.* at 744, 87 S.Ct. at 1400; accord *Stafford v. State*, 813 S.W.2d 503, 509-11 (Tex. Crim. App. 1991). An appeal is "wholly frivolous" or "without merit" when it "lacks any basis in law or fact." *McCoy v. Court of Appeals*, 486 U.S. 429, 439 n.10, 108 S.Ct. 1895, 1902 n.10, 100 L.Ed.2d 440 (1988). We have conducted an independent review of the record, and because we find this appeal to be wholly frivolous, we affirm the judgment.

We grant appointed counsel's motion to withdraw from representation of Barker. Notwithstanding this grant, appointed counsel **must** send Barker a copy of our decision, notify him of his right to file a *pro se* petition for discretionary review, and send this Court a letter certifying counsel's compliance with Texas Rule of Appellate Procedure 48.4. TEX. R. APP. P. 48.4; see also *Ex parte Owens*, 206 S.W.3d 670, 673-74 (Tex. Crim. App. 2006).

¹ Accordingly, the motion to withdraw filed by Barker's originally appointed counsel in this Court is dismissed as moot.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed

Opinion delivered and filed April 25, 2013

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