



IN THE
TENTH COURT OF APPEALS

No. 10-14-00018-CR

SAM WILEY, JR.,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 54th District Court
McLennan County, Texas
Trial Court No. 2012-381-C2**

MEMORANDUM OPINION

A jury found Sam Wiley guilty of sexual assault and sentenced him to twenty years' confinement and a \$5,000 fine. Wiley appealed.

Wiley's appointed appellate counsel has filed a motion to withdraw and an *Anders* brief, asserting that he has diligently reviewed the appellate record and that, in his opinion, the appeal is frivolous.¹ See *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396,

¹ Wiley's appointed attorney complied with all the requirements in *Anders* cases, as announced prior to *Kelly v. State*, No. PD-0702-13, ___ S.W.3d. ___, 2014 WL 2865901 (Tex. Crim. App. Jun. 25, 2014). He did

18 L.Ed.2d 493 (1967). Wiley has filed a *pro se* response; however, he does not raise any arguable issues.²

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 Wiley. Notwithstanding this grant, appointed counsel **must** send Wiley 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).

not have the benefit of *Kelly* at the time the motion to withdraw and the *Anders* brief were filed. He did, however, notify Wiley of his right to obtain and review the record and to file a response to the motion to withdraw and *Anders* brief. Wiley filed a lengthy response that cites to the record. Based on the notice provided by counsel and the response filed by Wiley, we find it unnecessary to require appointed counsel or this Court to take any additional steps or procedures, as discussed in *Kelly*. We note that Wiley makes no complaint, request, or suggestion that causes this Court to question whether the record was made available to him for his review, if he desired to have it.

² Wiley’s *pro se* response does not contain proper proof of service; however, to expedite this matter, we implement Appellate Rule 2 to suspend Rule 9.5’s proof-of-service requirement for this document only. Additionally, Wiley’s motion requesting suspension of the rules of appellate procedure to allow him to file only the original of his *pro se* response is granted.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed

Opinion delivered and filed August 28, 2014

Do not publish

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