IN THE
TENTH COURT OF APPEALS

No. 10-15-00114-CR
No. 10-15-00115-CR

LARRY ELLIS CARRELL,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 66th District Court
Hill County, Texas
Trial Court Nos. 32,883 and 33,105

MEMORANDUM OPINION

Appellant Larry Ellis Carrell pled no contest to the third-degree felony charges of aggravated perjury and failure to appear/bail jumping, and under a plea bargain, was sentenced to four years' imprisonment in each case and then was placed on four years' community supervision in each case. The State petitioned to revoke Appellant's community supervision in each case, and after a hearing, the trial court found several of the alleged violations to be true in each case, revoked Appellant's community supervision

in each case, and sentenced Appellant to four years' imprisonment in each case, to be served consecutively. These appeals ensued. We will affirm.

In accordance with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), in each case Appellant's court-appointed appellate counsel filed a brief and motion to withdraw, stating that her review of the records yielded no grounds of error upon which an appeal can be predicated. Counsel's briefs meet the requirements of *Anders*; they present a professional evaluation demonstrating why there are no arguable grounds to advance on appeal. *See In re Schulman*, 252 S.W.3d 403, 407 n.9 (Tex. Crim. App. 2008) ("In Texas, an *Anders* brief need not specifically advance 'arguable' points of error if counsel finds none, but it must provide record references to the facts and procedural history and set out pertinent legal authorities."); *Stafford v. State*, 813 S.W.2d 503, 510 n.3 (Tex. Crim. App. 1991). In compliance with *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. [Panel Op.] 1978), Appellant's counsel has carefully discussed why, under controlling authority, there is no reversible error in the trial court's judgments. Counsel has informed us that she has: (1) examined the records and found no arguable grounds to advance on appeal; (2) served a copy of each brief and motion to withdraw on Appellant; and (3) provided Appellant with a copy of the records and informed him of his right to file a pro se response. *See Anders*, 386 U.S. at 744, 87 S.Ct. at 1400; *Stafford*, 813 S.W.2d at 510 n.3; *see also Schulman*, 252 S.W.3d at 409 n.23.

Appellant filed a pro se response before he was provided with the record by his

counsel, and he filed a second pro se response after being provided the record.[1] The only discernible complaint in the pro se responses are Appellant's allegations that he never was on bail and that he never posted bail to be able to commit bail jumping/failure to appear and that he appeared on time at court at all times. This is a complaint about the sufficiency of the evidence to support the conviction for bail jumping/failure to appear. As we noted above, Appellant pled no contest to the charge of bail jumping/failure to appear and was placed on community supervision. In a revocation appeal, Appellant cannot challenge the sufficiency of the evidence for the original conviction that he pled guilty to; if the defendant is placed on community supervision, then the defendant may, at that time but only then, appeal on issues relating to the original conviction, such as sufficiency of the evidence to support the plea. TEX. CODE CRIM. PROC. ANN. art. 42.12, § 23(b) (West Supp. 2014); *Manuel v. State,* 994 S.W.2d 658, 661 (Tex. Crim. App. 1999). "An appeal from an order revoking community supervision is limited to the propriety of the revocation." *Gutierrez v. State,* 354 S.W.3d 1, 4 n.4 (Tex. App.—Texarkana 2011) (citing *Corley v. State,* 782 S.W.2d 859, 860 n.2 (Tex. Crim. App. 1989), *aff'd,* 380 S.W.3d 167 (Tex. Crim. App. 2012)). Accordingly, Appellant does not present an arguable ground to advance in this appeal.

Upon receiving an *Anders* brief, we must conduct a full examination of all the proceedings to determine whether the case is wholly frivolous. *Penson v. Ohio*, 488 U.S.

[1] Appellant's pro se responses were not served on the State, and the State was not advised of its right to respond to the *Anders* briefs or the pro se responses. To expedite these cases, we invoke Rule of Appellate Procedure 2 to suspend these requirements.

75, 80, 109 S.Ct. 346, 349-50, 102 L.Ed.2d 300 (1988). We have reviewed the records and counsel's briefs and have found nothing that would arguably support an appeal. *See Bledsoe v. State*, 178 S.W.3d 824, 827-28 (Tex. Crim. App. 2005); *Stafford*, 813 S.W.2d at 509. Accordingly, the judgments of the trial court are affirmed.

Appellant's attorney has moved to withdraw as counsel for Appellant in each case. *See Anders*, 386 U.S. at 744, 87 S.Ct. at 1400; *see also Schulman*, 252 S.W.3d at 408 n.17. We grant counsel's motions to withdraw. Within five days of the date of this opinion, counsel is **ORDERED** to send a copy of this opinion and this Court's judgments to Appellant and to advise him of his right to file a petition for discretionary review in each case.[2] *See* TEX. R. APP. P. 48.4; *see also Schulman*, 252 S.W.3d at 412 n.35; *Ex parte Owens*, 206 S.W.3d 670, 673 (Tex. Crim. App. 2006).

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
(Chief Justice Gray dissenting with a note)*
Affirmed
Opinion delivered and filed January 14, 2016
Do not publish
[CR25]

[2] New appellate counsel will not be appointed for Appellant. Should Appellant wish to seek further review of this case by the Court of Criminal Appeals, he must either retain an attorney to file a petition for discretionary review or must file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days from the date of this opinion or from the date the last timely motion for rehearing was overruled by this Court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with the Clerk of the Court of Criminal Appeals. *See id.* at R. 68.3. Any petition for discretionary review should comply with the requirements of rule 68.4 of the Texas Rules of Appellate Procedure. *See id.* at R. 68.4; *see also Schulman*, 252 S.W.3d at 409 n.22.

*(Under this Court's established procedure, the State should be provided a copy of the defendant's response but has not; nor has the State been notified of its right to file a reply to the defendant's response. *See Wilson v. State*, 955 S.W.2d 693, 697-98 (Tex. App.—Waco 1997, order) ("If the court receives a pro se response, the court will then notify the State that it has thirty days within which to file a brief or a request for an extension. *See* TEX. R. APP. P. 38.6(b), (d). Upon receipt of the State's brief or after the time for filing such has lapsed, we will consider the potential sources of error identified by counsel and by his client.").

There is absolutely no justification to not follow this Court's established precedent. The Court's refusal to do so is nothing more than silently overruling precedent without discussion or analysis and is, in my view, unjustified. It certainly does not meet the good cause exception in Rule 2, which actually does not even apply when the Court is circumventing its own precedent rather than a rule of appellate procedure.

Disposition of this proceeding is premature. I would follow our established procedure. Accordingly, I must dissent. The result may be correct at a subsequent date, but it is premature to make that determination and issue the opinion as of this date. I respectfully dissent to the judgment of the court disposing of this proceeding in this manner at this time for the reason stated.)