

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-01-00450-CR**

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**In re Edward A. Kohler**

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**FROM THE DISTRICT COURT OF BELL COUNTY, 27TH JUDICIAL DISTRICT  
NO. 29,744, HONORABLE JOE CARROLL, JUDGE PRESIDING**

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Edward A. Kohler filed a pro se motion for forensic DNA testing of biological evidence introduced at his 1981 trial for aggravated sexual assault. Act of Apr. 3, 2001, 77d Leg., R.S., ch. 2, § 2, art. 64.01(a), 2001 Tex. Sess. Law Serv. 2 (West) (to be codified at Tex. Code Crim. Proc. Ann. art. 64.01(a)). In its response to the motion, the State informed the district court that the only biological evidence in this case was a sexual assault examination kit, that no seminal stains were detected during laboratory testing of the kit, and that the kit was destroyed in August 1983. *Id.* art. 64.02. Evidence supporting the factual statements made in the State's response was introduced at the hearing on Kohler's motion, at which Kohler was represented by appointed counsel. The court denied the motion for DNA testing after effectively finding that no biological evidence still exists for testing. *Id.* art. 64.03(a)(1)(A)(i). This appeal followed. *Id.* art. 64.05.

Kohler's court-appointed attorney filed a brief concluding that the appeal is frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable

grounds to be advanced. *See also Penson v. Ohio*, 488 U.S. 75 (1988); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978); *Currie v. State*, 516 S.W.2d 684 (Tex. Crim. App. 1974); *Jackson v. State*, 485 S.W.2d 553 (Tex. Crim. App. 1972); *Gainous v. State*, 436 S.W.2d 137 (Tex. Crim. App. 1969). A copy of counsel's brief was delivered to Kohler, who was advised of his right to examine the record and file a pro se brief. No pro se brief has been received.

We have reviewed the record and counsel's brief and agree that the appeal is frivolous and without merit. We find nothing in the record that might arguably support the appeal. Counsel's motion to withdraw is granted.

The district court's order is affirmed.

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Bea Ann Smith, Justice

Before Chief Justice Aboussie, Justices B. A. Smith and Puryear

Affirmed

Filed: December 6, 2001

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