

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-06-00073-CR

In re Johnathan Daniel Wintrow

**FROM THE DISTRICT COURT OF BELL COUNTY, 264TH JUDICIAL DISTRICT
NO. 50,285, HONORABLE MARTHA J. TRUDO, JUDGE PRESIDING**

MEMORANDUM OPINION

In 1999, Johnathan Daniel Wintrow was convicted of two counts of aggravated sexual assault of a child and sentenced to thirty-five years' imprisonment after he pleaded guilty to penetrating the complainant's sexual organ with his finger and causing the complainant's sexual organ to contact his mouth. Wintrow now appeals from an order denying his pro se motion for forensic DNA testing. The court found that identity was not an issue (because the complainant was Wintrow's step-daughter) and that Wintrow failed to establish that he would not have been convicted if exculpatory results had been obtained through DNA testing (because he gave a written confession to the police). *See Tex. Code Crim. Proc. Ann. art. 64.03(a)(1)(B), (a)(2)(A) (West Supp. 2005).*

The attorney appointed to represent Wintrow on appeal 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). Wintrow also filed a pro se brief.

We have reviewed the record, counsel's brief, and the pro se brief. We find nothing in the record that might arguably support the appeal. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). Counsel's motion to withdraw is granted.

The order denying DNA testing is affirmed.

W. Kenneth Law, Chief Justice

Before Chief Justice Law, Justices Patterson and Pemberton

Affirmed

Filed: June 30, 2006

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