

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

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**NO. 03-08-00191-CR**

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**In re James Edward Nealy**

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**FROM THE DISTRICT COURT OF BELL COUNTY, 27TH JUDICIAL DISTRICT  
NO. 48,441, HONORABLE MARTHA J. TRUDO, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

James Edward Nealy appeals from the district court's order denying post-conviction DNA testing. Nealy'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). The principles of *Anders* have been extended to include appeals of a trial court's ruling on a motion for post-conviction DNA testing. *See Murphy v. State*, 111 S.W.3d 846, 847-48 (Tex. App.—Dallas 2003, no pet.).

Nealy received a copy of counsel's brief and was advised of his right to examine the appellate record and to file a pro se brief. No pro se brief has been filed, although Nealy did file a motion for "Stay of Proceedings in the Appeal Court" to allow him the opportunity to refile his

motion for DNA testing in district court. We overrule the motion to stay, noting that the outcome of this appeal does not preclude Nealy from filing subsequent motions for DNA testing. *See Ex parte Baker*, 185 S.W.3d 894, 897 (Tex. Crim. App. 2006) (stating that chapter 64 of code of criminal procedure “does not prohibit a second, or successive motion for forensic DNA testing”).

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. *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.

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Diane M. Henson, Justice

Before Justices Patterson, Waldrop and Henson

Affirmed

Filed: November 20, 2008

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