

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-10-00851-CR

Gilbert Carbajal, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF TOM GREEN COUNTY, 51ST JUDICIAL DISTRICT
NO. A-10-0084-SB, HONORABLE JAY K. WEATHERBY, JUDGE PRESIDING**

ORDER

PER CURIAM

Appellant Gilbert Carbajal was convicted of the felony offense of evading arrest with a motor vehicle. *See* Tex. Pen. Code Ann. § 38.04 (West 2011). His appointed attorney on appeal has filed a brief raising two issues: the sufficiency of the evidence and the effectiveness of trial counsel.

With regard to the first issue, counsel’s brief contains a thorough summary of the evidence and the relevant case law. Counsel then makes two contradictory assertions regarding the sufficiency of the evidence. Counsel states on pages 27 and 28 of his brief that appellant’s “legal insufficiency argument is without merit” because a rational trier of fact could have found from the circumstantial evidence that each element of the offense was proved. On page 29, however, counsel asserts that “the jury’s verdict was not rational.”

It is unclear whether counsel considers this appeal to be meritorious or frivolous with respect to the sufficiency of the evidence.¹ Therefore, counsel is ordered to do one of the following:

- If counsel is of the opinion that the evidence is legally **insufficient** and that the appeal has **merit** as to that issue, he shall file a supplemental brief clarifying his argument with respect to the sufficiency issue.
- If counsel is of the opinion that the evidence is legally **sufficient** and that appellant's appeal is **frivolous** as to that issue, he shall: (1) deliver a copy of his brief to appellant and advise appellant of his right to examine the appellate record and to file a pro se brief or other written response; (2) certify in writing that he has complied with the foregoing requirement; and (3) file a motion to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967); *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991).

Counsel shall, within fifteen days from the date of this order, tender to this Court either his supplemental brief or his certification and motion to withdraw.

It is ordered August 24, 2011.

Before Chief Justice Jones, Justices Henson and Goodwin

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¹ Counsel's brief also contains a thorough discussion of the facts and law relevant to the ineffective assistance claim. Counsel concludes his discussion by stating that "trial counsel's defense strategy appears to [have been] appropriate under the circumstances" and that "Appellant's arguments that defense counsel provided ineffective assistance of counsel . . . [are] without merit."