

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

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**NO. 03-13-00288-CR**

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**Johnny Moreno, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE DISTRICT COURT OF WILLIAMSON COUNTY, 368TH JUDICIAL DISTRICT  
NO. 07-712-K368, HONORABLE BURT CARNES, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

Johnny Moreno is serving two concurrent twenty-five year prison sentences imposed in 2008 after he pleaded guilty to and was convicted of burglary and aggravated robbery. *See* Tex. Penal Code §§ 29.03, 30.02. Appellant appeals an order by the district court denying his motion for post-conviction forensic DNA testing. In its order, the trial court found that appellant “has not shown by a preponderance of the evidence that a reasonable probability exists that [appellant] would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing.” *See* Tex. Code Crim. Proc. art. 64.03(a)(1)(A)(i).

Appellant’s court-appointed attorney has filed a brief concluding that the appeal is frivolous and without merit. The brief meets the requirements of *Anders v. California* by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See Anders v. California*, 386 U.S. 738, 744 (1967); *Garner v. State*, 300 S.W.3d 763,

766 (Tex. Crim. App. 2009); *see also* *Penson v. Ohio*, 488 U.S. 75, 86–87 (1988). Appellant 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. We have received appellant’s pro se brief.

We have conducted an independent review of the record, including appellant counsel’s brief and appellant’s pro se brief, and find no reversible error. *See Anders*, 386 U.S. at 744; *Garner*, 300 S.W.3d at 766; *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). We agree with counsel that the record presents no arguably meritorious grounds for review and the appeal is frivolous. The points of error raised in appellant’s pro se brief have no arguable merit. *See Garner*, 300 S.W.3d at 766; *Bledsoe*, 178 S.W.3d at 827.

Counsel’s motion to withdraw is granted. The trial court’s order denying DNA testing is affirmed.

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Scott K. Field, Justice

Before Chief Justice Jones, Justices Pemberton and Field

Affirmed

Filed: October 24, 2013

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