



NUMBER 13-07-00376-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

FRANCISCO GUTIERREZ,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 117th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Yañez and Benavides
Memorandum Opinion by Chief Justice Valdez**

A jury found appellant, Francisco Gutierrez, guilty of aggravated assault with a deadly weapon. See TEX. PENAL CODE ANN. § 22.02(a)(2) (Vernon Supp. 2007). Appellant's counsel has filed a brief with this Court asserting there is no basis for appeal. We agree, and affirm the trial court's judgment.

I. COMPLIANCE WITH *ANDERS V. CALIFORNIA*

Appellant's counsel filed an *Anders* brief in which she has concluded that there is nothing that merits review on direct appeal. *Anders v. California*, 386 U.S. 738, 744 (1967). Appellant's brief meets the requirements of *Anders*. *Id.* at 744-45; see *High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. [Panel Op.] 1978). In compliance with *Anders*, counsel presented a professional evaluation of the record and referred this Court to what, in her opinion, are all issues which might arguably support an appeal. See *Anders*, 386 U.S. at 744; *Currie v. State*, 516 S.W.2d 684, 684 (Tex. Crim. App. 1974); see also *High*, 573 S.W.2d at 812. Counsel informed this Court that: (1) she diligently read and reviewed the record and the circumstances of appellant's conviction; (2) she believes that there are no arguable grounds to be advanced on appeal; and (3) she forwarded to appellant a copy of the brief filed in support of his motion to withdraw, with a letter informing appellant of his right to review the record and file a pro se brief. See *Anders*, 386 U.S. at 744-45; see also *Stafford v. State*, 813 S.W.2d 503, 509 (Tex. Crim. App. 1991); *High*, 573 S.W.2d at 813. No pro se brief has been filed by Gutierrez.

II. INDEPENDENT REVIEW

The Supreme Court advised appellate courts that upon receiving a "frivolous appeal" brief, they must conduct "a full examination of all the proceedings to decide whether the case is wholly frivolous." *Penson v. Ohio*, 488 U.S. 75, 80 (1988); see *Ybarra v. State*, 93 S.W.3d 922, 926 (Tex. App.—Corpus Christi 2003, no pet.). Accordingly, we have carefully reviewed the record and have found nothing that would arguably support an appeal. See *Bledsoe v. State*, 178 S.W.3d 824, 826 (Tex. Crim. App. 2005); *Stafford*, 813 S.W.2d at 509. We agree with counsel that the appeal is wholly frivolous and without merit. See

Bledsoe, 178 S.W.3d at 827-28 (“Due to the nature of *Anders* briefs, by indicating in the opinion that it considered the issues raised in the briefs and reviewed the record for reversible error but found none, the court of appeals met the requirements of Texas Rule of Appellate Procedure 47.1.”). Accordingly, we affirm the judgment of the trial court.

III. MOTION TO WITHDRAW

An appellate court may grant counsel’s motion to withdraw in connection with an *Anders* brief. *Moore v. State*, 466 S.W.2d 289, 291 n.1 (Tex. Crim. App. 1971); *Stafford*, 813 S.W.2d at 511 (noting that *Anders* brief should be filed with request to withdraw from case); see *In re Shulman* 252 S.W.3d 403, *21-22 (Tex. Crim. App. 2008) (official pinpoint not designated). We grant counsel’s motion to withdraw. We order counsel to advise appellant promptly of the disposition of the case and the availability of discretionary review. See *Ex parte Wilson*, 956 S.W.2d 25, 27 (Tex. Crim. App. 1997) (per curiam).

ROGELIO VALDEZ
Chief Justice

Do not publish.
TEX. R. APP. P. 47.2(b).
Memorandum Opinion delivered and
filed this the 29th day of July, 2008.