



NUMBER 13-15-00252-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

GUADALUPE PACHECO,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 377th District Court of
Victoria County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Garza
Memorandum Opinion by Justice Garza**

Appellant Guadalupe Pacheco entered an “open” plea of guilty to one count of aggravated assault, a second-degree felony offense, see TEX. PENAL CODE ANN. § 22.02(a)(2), (b) (West, Westlaw through 2015 R.S.), and one count of evading arrest or

detention, a third-degree felony offense. See *id.* § 38.04(a), (b)(2)(A) (West, Westlaw through 2015 R.S.). Following a punishment hearing, the trial court sentenced appellant to twenty years' imprisonment and a \$10,000 fine on the aggravated assault offense and to ten years' imprisonment and a \$10,000 fine on the evading arrest offense, with the sentences ordered to run concurrently. Appellant's court-appointed counsel has filed an *Anders* brief. See *Anders v. California*, 386 U.S. 738, 744 (1967). We affirm.

I. *ANDERS* BRIEF

Pursuant to *Anders v. California*, appellant's court-appointed appellate counsel has filed a brief and a motion to withdraw with this Court, stating that his review of the record yielded no grounds of error upon which an appeal can be predicated. See *id.* Counsel's brief meets the requirements of *Anders* as it presents a professional evaluation demonstrating why there are no arguable grounds to advance on appeal. See *In re Schulman*, 252 S.W.3d 403, 407 n.9 (Tex. Crim. App. 2008) ("In Texas, an *Anders* brief need not specifically advance 'arguable' points of error if counsel finds none, but it must provide record references to the facts and procedural history and set out pertinent legal authorities.") (citing *Hawkins v. State*, 112 S.W.3d 340, 343–44 (Tex. App.—Corpus Christi 2003, no pet.)); *Stafford v. State*, 813 S.W.2d 503, 510 n.3 (Tex. Crim. App. 1991).

In compliance with *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. [Panel Op.] 1978) and *Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014), appellant's counsel carefully discussed why, under controlling authority, there is no reversible error in the trial court's judgment. Counsel has informed this Court, in writing, that counsel has: (1) notified appellant that counsel has filed an *Anders* brief and a motion to withdraw; (2) provided the appellant with copies of both pleadings; and (3) informed

the appellant of appellant's rights to file a pro se response,¹ and review the record preparatory to filing that response. See *Anders*, 386 U.S. at 744; *Kelly*, 436 S.W.3d at 319–320, *Stafford*, 813 S.W.2d at 510 n.3; see also *In re Schulman*, 252 S.W.3d at 409 n.23.

The record shows that appellant was provided a copy of the record on August 21, 2015. After this Court granted several motions for extension of time in which to file his pro se response, appellant filed his pro se response on February 25, 2016.

II. INDEPENDENT REVIEW

Upon receiving an *Anders* brief, we must conduct a full examination of all the proceedings to determine whether the case is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). When an *Anders* brief and a subsequent pro se response are filed, a court of appeals reviews the entire record, and: (1) determines that the appeal is wholly frivolous and issues an opinion explaining that it finds no reversible error; or (2) determines that there are arguable grounds for appeal and remands the case to the trial court for appointment of new appellate counsel. *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). If the court finds arguable grounds for appeal, it may not review those grounds until after new counsel has briefed those issues on appeal. *Id.*

We have reviewed the entire record, counsel's brief, and appellant's pro se response, and we have found nothing that would arguably support an appeal. See *id.* at

¹ The Texas Court of Criminal Appeals has held that “the pro se response need not comply with the rules of appellate procedure in order to be considered. Rather, the response should identify for the court those issues which the indigent appellant believes the court should consider in deciding whether the case presents any meritorious issues.” *In re Schulman*, 252 S.W.3d 403, 409 n.23 (Tex. Crim. App. 2008) (quoting *Wilson v. State*, 955 S.W.2d 693, 696–97 (Tex. App.—Waco 1997, no pet.)).

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 requirement of Texas Rule of Appellate Procedure 47.1.”); *Stafford*, 813 S.W.2d at 509. There is no reversible error in the record. Accordingly, the judgment of the trial court is affirmed.

III. MOTION TO WITHDRAW

In accordance with *Anders*, appellant’s attorney has asked this Court for permission to withdraw as counsel for appellant. See *Anders*, 386 U.S. at 744; see also *In re Schulman*, 252 S.W.3d at 408 n.17 (citing *Jeffery v. State*, 903 S.W.2d 776, 779–80 (Tex. App.—Dallas 1995, no pet.) (“[I]f an attorney believes the appeal is frivolous, he must withdraw from representing the appellant. To withdraw from representation, the appointed attorney must file a motion to withdraw accompanied by a brief showing the appellate court that the appeal is frivolous.”) (citations omitted)). We grant counsel’s motion to withdraw. Within five days of the date of this Court’s opinion, counsel is ordered to send a copy of this opinion and this Court’s judgment to appellant and to advise him of his right to file a petition for discretionary review.² See TEX. R. APP. P. 48.4; see also *In re Schulman*, 252 S.W.3d at 412 n.35; *Ex parte Owens*, 206 S.W.3d 670, 673 (Tex. Crim. App. 2006).

DORI CONTRERAS GARZA,
Justice

² No substitute counsel will be appointed. Should appellant wish to seek further review of this case by the Texas Court of Criminal Appeals, he must either retain an attorney to file a petition for discretionary review or file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days from the date of either this opinion or the last timely motion for rehearing or timely motion for en banc reconsideration that was overruled by this Court. See TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with the clerk of the court of criminal appeals, see *id.* R. 68.3, and should comply with the requirements of Texas Rule of Appellate Procedure 68.4. See *id.* R. 68.4.

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
21st day of April, 2016.