



NUMBER 13-16-00055-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

LATRELL LATHAM,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

On appeal from the 94th District Court of
Nueces County, Texas.

MEMORANDUM OPINION

**Before Justices Contreras, Benavides, and Longoria
Memorandum Opinion by Justice Longoria**

Appellant Latrell Latham challenges a judgment revoking his probation and adjudicating him guilty of two counts of aggravated assault with a deadly weapon, both second-degree felonies. See TEX. PENAL CODE ANN. § 22.02(a) (West, Westlaw through 2015 R.S.). We affirm.

I. BACKGROUND

The State charged appellant by indictment with two counts of aggravated assault for shooting John Reese and Joshua Garza with a firearm during a drug deal. See *id.* Appellant pled guilty to both offenses pursuant to a plea agreement. The trial court received appellant's plea, deferred adjudication of guilt, and placed him on community supervision for ten years.

The State later moved to revoke appellant's supervision and adjudicate him guilty for violating the conditions of his supervision by: (1) unlawfully carrying a weapon; (2) failing to identify himself to a peace officer when he was a fugitive; (3) submitting a urinalysis specimen which tested positive for marijuana; (4) submitting another urinalysis specimen which tested positive for marijuana, cocaine, benzodiazepine, and opiates; (5) failing to report a change of residence; (6) failing to pay court costs; (7) failing to pay the monthly supervision fee for six months; (8) failing to participate in and successfully complete a substance-abuse recovery program; and (9) twice failing to observe a nighttime curfew. Appellant pled "true" to all but the first, fifth, and ninth allegations. Following a hearing, the trial court found the contested allegations to be "not true" and the remaining allegations to be "true." The court revoked appellant's supervision, adjudicated him guilty of the charged offenses, and imposed concurrent sentences of ten years' imprisonment in the Institutional Division of the Texas Department of Criminal Justice.

This appeal followed. As discussed below, appellant's court-appointed counsel has filed a motion to withdraw accompanied by an *Anders* brief. See *Anders v. California*, 386 U.S. 738, 744 (1967).

II. COMPLIANCE WITH *ANDERS*

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 her 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) (orig. proceeding) ("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.") (quoting *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) (en banc).

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 (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) informed appellant of his rights to file a pro se response,¹ review the record preparatory to filing that response, and seek discretionary review if the Court concludes that the appeal is frivolous; and (3) provided appellant with a copy of the complete appellate

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) (orig. proceeding) (quoting *Wilson v. State*, 955 S.W.2d 693, 696–97 (Tex. App.—Waco 1997, no pet.)).

record. See *Anders*, 386 U.S. at 744; *Kelly*, 436 S.W.3d at 319; *Stafford*, 813 S.W.2d at 510 n.3; see also *In re Schulman*, 252 S.W.3d at 409 n.23. An adequate time has passed, and appellant has not filed a pro se response.

III. INDEPENDENT REVIEW

Upon receiving an *Anders* brief, we must conduct a full examination of all the proceedings to determine whether the appeal is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). We have reviewed the record and counsel's brief, and we have found no reversible error. See *Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005) (“Due to the nature of *Anders* briefs, by indicating in the opinion it considered the issues raised in the brief 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.”); *Stafford*, 813 S.W.2d at 509. We affirm the trial court's judgment.

IV. 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).

NORA L. LONGORIA,
Justice

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

Delivered and filed the
4th day of May, 2017.

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 and should comply with the requirements of Texas Rule of Appellate Procedure 68.4. See *id.* R. 68.3, 68.4.