



NUMBER 13-16-00389-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JAMES EDWARD EPPERSON,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

On appeal from the 277th District Court
of Williamson County, Texas.

MEMORANDUM OPINION

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

In January of 2014, pursuant to a plea agreement, appellant James Edward Epperson pleaded guilty to fraudulent use or possession of identifying information, a second-degree felony offense. See TEX. PENAL CODE ANN. § 32.51(b), (c)(3) (West, Westlaw through Ch. 49, 2017 R.S.). The trial court deferred adjudication of guilt, placed

him on community supervision for a period of four years, and imposed a \$2,500 fine.

In January of 2016, the State filed a motion to adjudicate, in which it alleged multiple violations of the conditions of appellant's community supervision. At the revocation hearing on April 29, 2016, appellant pleaded "not true" to the State's allegations. Based on evidence adduced at the hearing from law enforcement and community supervision personnel, the trial court found several of the State's allegations "true," including that appellant possessed methamphetamine and fled from a police officer on two separate occasions. The trial court revoked appellant's community supervision, adjudicated him guilty, and sentenced him to twenty years' imprisonment. We affirm.

I. **ANDERS BRIEF**¹

Appellant's appellate counsel has filed a motion to withdraw and a brief in support thereof in which he states that he has diligently reviewed the entire record and has found no non-frivolous issues. See *Anders v. California*, 386 U.S. 738 (1967); *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. [Panel Op.] 1978). Counsel's brief meets the requirements of *Anders* as it presents a thorough, professional evaluation showing why there are no arguable grounds for advancing an 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."); *Stafford v. State*, 813 S.W.2d 503, 510 n.3 (Tex. Crim. App. 1991) (en banc).

¹ This case is before this Court on transfer from the Third Court of Appeals in Austin pursuant to an order issued by the Texas Supreme Court. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through Ch. 49, 2017 R.S.).

In compliance with *Kelly v. State*, 436 S.W.3d 313, 319 (Tex. Crim. App. 2014), counsel has carefully discussed why, under controlling authority, there is no reversible error in the trial court's judgment. Counsel has informed this Court that he has (1) notified appellant that he has filed an *Anders* brief and a motion to withdraw; (2) provided appellant with copies of both pleadings; (3) informed appellant of his rights to file a pro se response,² to review the record preparatory to filing that response, and to seek review if we conclude that the appeal is frivolous; and (4) provided appellant with a motion for pro se access to the appellate record lacking only appellant's signature and the date. See *Anders*, 386 U.S. at 744; *Kelly*, 436 S.W.3d at 319–20. More than an adequate time has passed, and appellant has not filed a pro se response.

II. 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 motion to withdraw and brief in support thereof, 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. Accordingly, we affirm the judgment of the trial court.

² 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.)).

III. MOTION TO WITHDRAW

In accordance with *Anders*, appellant's appellate counsel has filed a motion to withdraw. 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.) (“If 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 the motion to withdraw.

We order counsel to send a copy of the opinion and judgment to appellant and to advise him of his right to file a petition for discretionary review, within five days of the date of this opinion.³ 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
Justice

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

Delivered and filed the
24th day of August, 2017.

³ No substitute counsel will be appointed. Should appellant wish to seek further review 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 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 Texas Court of Criminal Appeals, see TEX. R. APP. P. 68.3(a), and must comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. See TEX. R. APP. P. 68.4.