



**NUMBER 13-17-00397-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**DAVID ALI WHITE,**

**Appellant,**

**v.**

**THE STATE OF TEXAS,**

**Appellee.**

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**On appeal from the 411th District Court  
of Polk County, Texas.**

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**MEMORANDUM OPINION**

**Before Justices Rodriguez, Longoria, and Hinojosa  
Memorandum Opinion by Justice Rodriguez**

Appellant David Ali White pleaded guilty to retaliation, a third-degree felony which was enhanced to a second-degree felony. See TEX. PENAL CODE ANN. §§ 12.42(d); 36.06(c) (West, Westlaw through 2017 1st C.S.). The trial court found White guilty and sentenced him to ten years in the Institutional Division of the Texas Department of Criminal Justice. This appeal followed.

Determining that there were no issues that might arguably support an appeal, counsel filed an *Anders* brief in which he reviewed the merits, or lack thereof, of the appeal. We affirm the judgment of the trial court.<sup>1</sup>

### I. COMPLIANCE WITH *ANDERS*

Pursuant to *Anders v. California*, White's counsel filed a brief stating that, in his professional opinion, this is a frivolous appeal. See 386 U.S. 738, 744–45 (1967). Counsel's brief meets the requirements of *Anders* as it presents a professional evaluation showing why there are no meritorious 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.") (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) (en banc).

In compliance with *High v. State*, counsel has demonstrated that he has complied with the requirements of *Anders* by discussing why, under controlling authority, any appeal from the judgment would be without merit and frivolous. See *High*, 573 S.W.2d 807, 813 (Tex. Crim. App. [Panel Op.] 1978). Counsel has also informed this Court, in writing, that he has: (1) notified White that counsel has filed an *Anders* brief and a motion to withdraw as his counsel; (2) provided White with copies of the pleadings; (3) informed

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<sup>1</sup> This case is before the Court on transfer from the Ninth Court of Appeals in Beaumont pursuant to an order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2017 1st C.S.).

White of his right to file a pro se response,<sup>2</sup> to review the record preparatory to filing that response, and to seek discretionary review if the court of appeals concludes that the appeal is frivolous; (4) provided White a copy of the clerk's record and the reporter's record; and (5) provided White with a form motion for pro se access to the appellate record, with instructions on how to file the motion, should he desire to do so. See *Anders*, 386 U.S. at 744; *Kelly v. State*, 436 S.W.3d 313, 318–19 (Tex. Crim. App. 2014); *Stafford*, 813 S.W.2d 503; see also *In re Schulman*, 252 S.W.3d at 409 n.23. An adequate time has passed, and White has not filed either a timely motion seeking pro se access to the appellate record or a motion for extension of time to do so. And he has not filed a pro se brief.

## II. INDEPENDENT REVIEW

Upon receiving an *Anders* brief, this Court must conduct a full examination of all proceedings to determine whether the case is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). We have reviewed the entire record, and we have found nothing that would arguably support an appeal. See *Bledsoe v. State*, 178 S.W.3d 824, 826–28 (Tex. Crim. App. 2005) (“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. Accordingly, we affirm the judgment of the trial court.

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<sup>2</sup> 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*, counsel has asked this Court to grant his motion to withdraw as counsel for White. 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 counsel’s motion to withdraw that this Court carried with the case on September 22, 2017. Within five days of the date of this Court’s opinion, counsel is ordered to send a copy of the opinion and judgment to White and to advise White of his right to pursue a petition for discretionary review.<sup>3</sup> 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).

NELDA V. RODRIGUEZ  
Justice

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

Delivered and filed the 7th  
day of December, 2017.

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<sup>3</sup> No substitute counsel will be appointed. Should appellant wish to seek 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 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 *id.* at 68.3. Any petition for discretionary review should comply with the requirements of Texas Rule of Appellate Procedure 68.4. See *id.* R. 68.4.