NUMBER 13-17-00073-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

RAYMOND ELENO RODRIGUEZ, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 105th District Court of Kleberg County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Contreras and Benavides
Memorandum Opinion by Justice Contreras

Appellant Raymond Eleno Rodriguez pleaded guilty to one count of evading arrest or detention with a vehicle, a third-degree felony. *See* TEX. PENAL CODE ANN. § 38.04(a), (b)(2)(A) (West, Westlaw through 2017 1st C.S.). The charge was enhanced to a second-degree felony due to an allegation that Rodriguez had been previously convicted of a felony offense. *See id.* § 12.42(a) (West, Westlaw through 2017 1st C.S.). The trial court

deferred adjudication and placed Rodriguez on community supervision for five years. The State subsequently moved to revoke Rodriguez's community supervision and to adjudicate him guilty, alleging twenty violations of the terms of his community supervision. Rodriguez pleaded "true" to all of the allegations in the motion, and the trial court revoked his community supervision, adjudicated him guilty of the charged offense, and sentenced him to five years' imprisonment.

Rodriguez's appointed appellate counsel has filed a brief stating that there are no arguable grounds for appeal. *See Anders v. California*, 386 U.S. 738 (1967). We affirm.

I. *ANDERS* BRIEF

In his brief, Rodriguez's counsel states that he has diligently reviewed the entire record and "determined that no non-frivolous basis for appeal exists." *See id.*; *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).

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 Rodriguez that he has filed an *Anders* brief and a motion to withdraw; (2) provided

Rodriguez with copies of both pleadings, (3) informed Rodriguez of his right to file a pro se response,[1] to review the record preparatory to filing that response, and to seek review if we conclude that the appeal is frivolous; and (4) supplied Rodriguez with a form motion for pro se access to the appellate record. *See Anders*, 386 U.S. at 744; *Kelly*, 436 S.W.3d at 319–20. More than an adequate time has passed, and Rodriguez has filed neither a motion for pro se access to the record nor 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 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. Accordingly, we affirm the judgment of the trial court.

III. Motion to Withdraw

In accordance with *Anders*, Rodriguez'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

[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).

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 Rodriguez, and to advise him of his right to file a petition for discretionary review, within five days of the date of this opinion.[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
Justice

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

Delivered and filed the
15th day of February, 2018.

[2] No substitute counsel will be appointed. Should Rodriguez 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.