



NUMBER 13-17-00580-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN THE MATTER OF V.C.A., A CHILD

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

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Benavides and Longoria
Memorandum Opinion by Justice Benavides**

V.C.A.,¹ a child, has filed this appeal of her sentence to confinement to the Texas Juvenile Justice Department (TJJD). V.C.A. was charged and adjudicated of the offense of assault of a public servant, a third-degree felony. See TEX. PENAL CODE ANN. § 22.01(a), (b)(1) (West, Westlaw through 2017 1st C.S.).

V.C.A. pleaded true to the allegation during an adjudication hearing. See TEX.

¹ Pursuant to Rule 9.8(b) of the Texas Rules of Appellate Procedure, we will utilize aliases when referring to the parties to this proceeding. See TEX. R. APP. P. 9.8(b); TEX. FAM. CODE ANN. § 56.01(j) (West, Westlaw through 2017 1st C.S.).

FAM. CODE ANN. § 54.03 (West, Westlaw through 2017 1st C.S.). During her disposition hearing the following month, the trial court took judicial notice of the court's file, including a report from a psychologist. The court also heard testimony from the complainant, V.C.A.'s probation officers, V.C.A.'s guardian, V.C.A.'s Court Appointed Special Advocate, and V.C.A. herself. Following the close of testimony, the trial court sentenced V.C.A. to commitment in TJJD for an indeterminate sentence and made a finding that V.C.A. has behavioral health or other special needs that cannot be met with the resources available in the community. See *id.* §§ 54.04(d)(2), 54.04013 (West, Westlaw through 2017 1st C.S.). V.C.A. filed this notice of appeal. V.C.A.'s court-appointed appellate 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*, V.C.A.'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) (en banc).

In compliance with *High v. State* and *Kelly v. State*, V.C.A.'s counsel carefully discussed why, under controlling authority, there is no reversible error in the trial court's judgment. See *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. [Panel Op.] 1978); *Kelly v. State*, 436 S.W.3d 313, 319–22 (Tex. Crim. App. 2014). V.C.A.'s appellate counsel also notified this Court that he: (1) notified V.C.A. that he has filed an *Anders* brief and a motion to withdraw; (2) provided V.C.A. with copies of both pleadings; (3) informed V.C.A. of her rights to file a pro se response,² review the record preparatory to filing that response, and seek discretionary review if we conclude that the appeal is frivolous; (4) provided V.C.A. with a copy of the appellate record; and (5) informed V.C.A. that the pro se response, if any, should identify for the Court those issues which she believes the Court should consider in deciding whether the case presents any meritorious issues. See *Anders*, 386 U.S. at 744; *Kelly*, 436 S.W.3d at 319–20; see also *In re Schulman*, 252 S.W.3d at 409 n.23. V.C.A. did not file 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 case is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). A court of appeals has two options when an *Anders* brief is filed. After reviewing the entire record, it may: (1) determine that the appeal is wholly frivolous and issue an opinion explaining that it finds no reversible error; or (2) determine that there

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.” See *In re Schulman*, 252 S.W.3d 403, 407 n.23 (Tex. Crim. App. 2008) (quoting *Wilson v. State*, 955 S.W.2d 693, 696–97 (Tex. App.—Waco 1997, no pet.)).

are arguable grounds for appeal and remand 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 we have found nothing that would arguably support an appeal. *See id.* at 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*, V.C.A.’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 *Jeffrey 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 this Court’s opinion, counsel is ordered to send a copy of this opinion and this Court’s judgment to V.C.A. and advise her of her right to

file a petition for discretionary review.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).

IV. CONCLUSION

We affirm the judgment of the trial court.

GINA M. BENAVIDES,
Justice

Delivered and filed the
24th day of May, 2018.

³ No substitute counsel will be appointed. Should appellant wish to seek further review of this case by the Texas Court of Criminal Appeals, she 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 Texas Court of Criminal Appeals, see *id.* R. 68.3, and should comply with the requirements of the Texas Rule of Appellate Procedure 68.4. See *id.* R. 68.4.