



NUMBER 13-19-00400-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

**MICKEY OLGA RODRIGUEZ
A/K/A BANDA,**

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 156th District Court
of Bee County, Texas.**



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**MICKIE OLGA BANDA A/K/A
MICKIE RODRIGUEZ,**

Appellant,

v.

THE STATE OF TEXAS,

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**On appeal from the 156th District Court
of Bee County, Texas.**

MEMORANDUM OPINION

**Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Perkes**

Appellant Mickey Olga Rodriguez a/k/a Banda appeals from the revocation of her community supervision in two trial court causes.¹ Rodriguez's court-appointed counsel filed an *Anders* brief stating that there are no arguable grounds for appeal. See *Anders v. California*, 386 U.S. 738, 744 (1967). Rodriguez filed a pro se response, alerting this Court to the issues she believes warrant an appeal. We affirm.

I. BACKGROUND

On November 10, 2016, pursuant to a plea bargain agreement, Rodriguez pleaded guilty to prohibited substance in a correctional facility, a third-degree felony. See TEX. PENAL CODE ANN. § 38.11. The trial court imposed a sentence of ten years' confinement, ordered the sentence suspended, and placed Rodriguez on five years' community supervision. On November 8, 2018, Rodriguez pleaded guilty to robbery, a second-degree felony, in an unrelated cause,² for which the trial court placed her on deferred-adjudication community supervision for a period of ten years. See *id.* § 29.02.

On May 16, 2019, the State filed a motion to adjudicate guilt and motion to revoke community supervision, respectively. The motions uniformly alleged Rodriguez violated several terms of her community supervision, including failing to report and testing positive for methamphetamine.

On July 18, 2019, the trial court accepted Rodriguez's pleas of "true" on all ten violations, adjudicated her guilty, and sentenced her to ten years' confinement on each case to run concurrently. This appeal followed.

¹ Mickey Olga Rodriguez a/k/a Banda and Mickie Olga Banda a/k/a Mickie Rodriguez are the same individual; appellant acknowledges as much in her pro se brief. Because the issues presented in each appeal are identical, we are issuing a single memorandum opinion in the interest of judicial economy.

² Rodriguez's existing community supervision terms were unaffected by the subsequent offense.

II. ANDERS BRIEF

Pursuant to *Anders v. California*, Rodriguez'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 reversible 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." (citing *Hawkins v. State*, 112 S.W.3d 340, 343–44 (Tex. App.—Corpus Christi—Edinburg 2003, no pet.))); *Stafford v. State*, 813 S.W.2d 503, 510 n.3 (Tex. Crim. App. 1991).

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, 319–22 (Tex. Crim. App. 2014), Rodriguez's counsel carefully discussed why, under controlling authority, there is no reversible error in the trial court's judgment for either case. Rodriguez's counsel has also informed this Court in writing that he has (1) notified Rodriguez that counsel has filed *Anders* briefs and motions to withdraw; (2) provided her with copies of both pleadings; (3) informed her of her rights to file a pro se response, to review the record prior to filing a response, and to seek discretionary review in the Texas Court of Criminal Appeals if this Court finds that the appeal is frivolous; and (4) provided her with a form motion for pro se access to the appellate record with instructions to sign and file the motion with the court of appeals within ten days by mailing it to the address provided. See *Anders*, 386

U.S. at 744; *Kelly*, 436 S.W.3d at 319–20; *Stafford*, 813 S.W.2d at 510 n.3; *see also In re Schulman*, 252 S.W.3d at 409 n.23. In response, Rodriguez filed a pro se brief alleging (1) she did not voluntarily, intelligently, or knowingly plead true to the allegations raised in the motion for revocation, and (2) the trial court judge should have *sua sponte* disqualified herself from presiding over the case.

III. 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). We have reviewed counsel’s briefs, Rodriguez’s pro se brief, and the entire record of each case, and we have found nothing that would support a finding of reversible error. See *Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005) (“When faced with an *Anders* brief and if a later pro se brief is filed, the court of appeals . . . may determine that the appeal is wholly frivolous and issue an opinion explaining that it has reviewed the record and finds no reversible error.”); *Stafford*, 813 S.W.2d at 509.

IV. MOTIONS TO WITHDRAW

In accordance with *Anders*, Rodriguez’s attorney has asked this Court for permission to withdraw as counsel. 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 motions 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 Rodriguez and to 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).

V. CONCLUSION

We affirm the trial court's judgments.

GREGORY T. PERKES
Justice

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

Delivered and filed the
23rd day of July, 2020.

³ No substitute counsel will be appointed. If Rodriguez seeks 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. A petition for discretionary review must be filed with the clerk of the Court of Criminal Appeals. See *id.* R. 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.