



NUMBER 13-19-00535-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

GILBERT BENAVIDES JR.,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 24th District Court
of Victoria County, Texas.**

MEMORANDUM OPINION

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

On June 2, 2017, appellant Gilbert Benavides Jr. pleaded guilty to aggravated robbery, a first-degree felony. See TEX. PENAL CODE ANN. § 29.03. The trial court placed him on deferred-adjudication community supervision for a period of ten years. On April 17, 2019, the State filed a motion to adjudicate guilt, alleging that Benavides violated several terms of his community supervision, including failing to report for five months. The

trial court accepted Benavides's pleas of "true," adjudicated him guilty, and sentenced him to ten years' confinement. This appeal followed. Benavides's court-appointed counsel has filed an *Anders* brief stating that there are no arguable grounds for appeal. See *Anders v. California*, 386 U.S. 738, 744 (1967). We affirm.

I. **ANDERS BRIEF**

Pursuant to *Anders v. California*, Benavides'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), Benavides's counsel carefully discussed why, under controlling authority, there is no reversible error in the trial court's judgment. Benavides's counsel has also informed this Court in writing that he has (1) notified Benavides that counsel has filed an *Anders* brief and a motion to withdraw; (2) provided him with copies of both pleadings; (3) informed him of his rights to file a pro se response, to review the record preparatory to filing that 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 him 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. An adequate amount of time has passed, and Benavides 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 case is wholly frivolous. *Penson v. Ohio*, 488 U.S. 75, 80 (1988). We have reviewed the entire record and counsel’s brief, and we have found nothing that would arguably support an appeal. 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 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.

III. MOTION TO WITHDRAW

In accordance with *Anders*, Benavides’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 motion 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 Benavides and to advise him of his right to file a petition for discretionary review.¹ 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 trial court's judgment.

GREGORY T. PERKES,
Justice

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

Delivered and filed the
25th day of June, 2020.

¹ No substitute counsel will be appointed. If Benavides seeks further 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 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.