



**NUMBERS 13-20-00115-CR, 13-20-00116-CR, AND
13-20-00117-CR**

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ADAM LUKE GONZALES,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 117th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

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

On November 27, 2018, appellant Adam Luke Gonzales pleaded guilty to (1) possession of cocaine in an amount between four and two hundred grams with intent to deliver, a first-degree felony; (2) possession of methamphetamine in an amount less than one gram, a state-jail felony; (3) burglary of a building, a state-jail felony; and (4) theft,

both state-jail felonies.¹ See TEX. HEALTH & SAFETY CODE ANN. §§ 481.102, 481.112, 481.115; TEX. PENAL CODE ANN. §§ 30.02, 31.03. The trial court sentenced Gonzales to ten years' incarceration in the Texas Department of Criminal Justice for the first-degree felony and to two years in state jail for each state-jail felony, with the sentences to run concurrently. The trial court, however, suspended Gonzales's sentences for five years of community supervision. In December 2019, the State filed motions to revoke Gonzales's community supervision under each cause, and Gonzales pleaded true to all the allegations at a single hearing on the motions to revoke. The trial court found the violations to be true, revoked Gonzales's community supervision, and re-sentenced him to seven years' incarceration for the first-degree felony and eighteen months for each state-jail felony, with the sentences running concurrently. See TEX. CODE CRIM. PROC. ANN. art. 42A.755(a)(2).

Gonzales appealed, and his court-appointed appellate counsel has filed an *Anders* brief stating there are no arguable grounds for appeal. See *Anders v. California*, 386 U.S. 738, 744 (1967). We affirm appellate cause numbers 13-20-00115-CR and 13-20-00116-CR. We affirm as modified appellate cause number 13-20-00117-CR.

I. **ANDERS BRIEF**

Gonzales's appellate counsel has filed motions to withdraw and briefs in support thereof in which he states that he has diligently reviewed the entire record for each appellate cause and has found no non-frivolous grounds for appeal. See *id.*; *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. [Panel Op.] 1978). Counsel's briefs meet the requirements of *Anders* as they present a thorough, professional evaluation of the record

¹ The offense for possession of methamphetamine in an amount less than one gram is under appellate cause number 13-20-00115-CR. The offenses for burglary of a building and theft are under appellate cause number 13-20-00116-CR. The offense for possession of cocaine with intent to deliver is under appellate cause number 13-20-00117-CR.

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.”) (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 at 813, and *Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014), counsel carefully discussed why, under controlling authority, there is no reversible error in the trial court’s judgments. Gonzales’s counsel has also informed this Court under each appellate cause that he has: (1) notified Gonzales that he has filed an *Anders* brief and a motion to withdraw; (2) provided Gonzales with copies of both filings; (3) informed Gonzales of his rights to file a pro se response,² 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 Gonzales with a form motion for pro se access to the appellate record with instructions to file the motion in this Court. 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. More than adequate time has passed, and Gonzales 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.

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.” *In re Schulman*, 252 S.W.3d 403, 409 n. 23 (Tex. Crim. App. 2008).

75, 80 (1988). We have reviewed the records and counsel's briefs, 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 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.

However, we note that contrary to the reporter's record of the final hearing, the judgment in appellate cause number 13-20-00117-CR reflects that the length of appellant's sentence for his first-degree felony offense was five years, as opposed to the trial court's oral pronouncement that the sentence was for seven years. See TEX. HEALTH & SAFETY CODE ANN. §§ 481.102, 481.112(d). When the oral pronouncement of sentence and the written judgment vary, the oral pronouncement controls. *Ex parte Madding*, 70 S.W.3d 131, 135 (Tex. Crim. App. 2002). Appellate courts have the authority to modify a judgment to make it speak the truth. See TEX. R. APP. P. 43.2(b) (authorizing appellate courts to modify the judgment and affirm as modified); *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992). Accordingly, we modify the judgment in appellate cause number 13-20-00117-CR to reflect that appellant was sentenced to confinement in the Texas Department of Criminal Justice for seven years. See TEX. R. APP. P. 43.2(b); see also *Wiedenfeld v. State*, 450 S.W.3d 905, 907–08 (Tex. App.—San Antonio 2014, no pet.) (modifying the judgment in a case where counsel filed an *Anders* brief to make it consistent with the trial court's oral pronouncement of sentence).

III. MOTION TO WITHDRAW

In accordance with *Anders*, Gonzales's counsel has asked this Court for permission to withdraw under each appellate cause. 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.3d 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 memorandum opinion, we order counsel to send a copy of this opinion and judgments to Gonzales and to advise him of his right to file any 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, 67 (Tex. Crim. App. 2006).

IV. CONCLUSION

We affirm the trial court’s judgments in appellate cause numbers 13-20-00115-CR and 13-20-00116-CR. We affirm as modified the trial court’s judgment in appellate cause number 13-20-00117-CR.

DORI CONTRERAS
Chief Justice

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

Delivered and filed the
30th day of July, 2020.

³ No substitute counsel will be appointed. If Gonzales seeks further review by the Texas Court of Criminal Appeals, then 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 Texas Court of Criminal Appeals, see *id.* R. 68.3(a), and must comply with the requirements of the Texas Rule of Appellate Procedure. See *id.* R. 68.4.