

**NO. 12-16-00219-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

*DARIUS DUANE FAGAN,  
APPELLANT*

§ *APPEAL FROM THE*

*V.*

§ *CRIMINAL DISTRICT COURT 2*

*THE STATE OF TEXAS,  
APPELLEE*

§ *TARRANT COUNTY, TEXAS*

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***MEMORANDUM OPINION  
PER CURIAM***

Darius Duane Fagan appeals his conviction for evading arrest or detention with a vehicle. Appellant’s counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *Gainous v. State*, 436 S.W.2d 137 (Tex. Crim. App. 1969). Appellant filed a pro se response. We affirm.

**BACKGROUND**

Appellant was charged by felony information with evading arrest or detention with a vehicle while using the vehicle as a deadly weapon. Pursuant to a plea bargain agreement with the State, Appellant pleaded “guilty” to the offense, and the trial court deferred a finding of guilt, placed Appellant on community supervision for a term of four years, and assessed a fine of \$800.

Subsequently, the State filed a petition to proceed to adjudication. Appellant pleaded “true” to the allegation in the petition. After giving both parties an opportunity to present evidence and arguments, the trial court found the allegation true and assessed Appellant’s punishment at imprisonment for five years. This appeal followed.

ANALYSIS PURSUANT TO *ANDERS V. CALIFORNIA*

Appellant's counsel filed a brief in compliance with *Anders v. California* and *Gainous v. State*. Appellant's counsel relates that he has diligently reviewed the record and found no reversible error. In compliance with *High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. [Panel Op.] 1978), Appellant's brief contains a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced.<sup>1</sup>

Appellant contends in his pro se response that (1) he did not commit the offense, (2) he was unaware of his community supervision officer's location, (3) he was misled by defense counsel regarding the punishment range upon revocation, (4) defense counsel did not give him an opportunity to testify in the punishment phase, and (5) defense counsel was ineffective.

When faced with an *Anders* brief and a pro se response by an appellant, an appellate court can either (1) determine that the appeal is wholly frivolous and issue an opinion explaining that it has reviewed the record and finds no reversible error or (2) determine that arguable grounds for appeal exist and remand the cause to the trial court so that new counsel may be appointed to brief the issues. *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005).

CONCLUSION

After conducting an independent examination of the record, we find no reversible error and conclude that the appeal is wholly frivolous. *See id.* Accordingly, we *affirm* the judgment of the trial court.

As required by *Anders* and *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991), Appellant's counsel has moved for leave to withdraw. *See also In re Schulman*, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008) (orig. proceeding). We carried the motion for consideration with the merits and now *grant* counsel's motion for leave to withdraw.

Appellant's counsel has a duty to, within five days of the date of this opinion, send a copy of the opinion and judgment to Appellant and advise him of his right to file a petition for discretionary review. *See* TEX. R. APP. P. 48.4; *In re Schulman*, 252 S.W.3d at 411 n.35. Should Appellant wish to seek review of these cases by the Texas Court of Criminal Appeals, he

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<sup>1</sup> In compliance with *Kelly v. State*, Appellant's counsel provided Appellant with a copy of the brief, notified Appellant of his motion to withdraw as counsel, informed Appellant of his right to file a pro se response, and took concrete measures to facilitate Appellant's review of the appellate record. 436 S.W.3d 313, 319 (Tex. Crim. App. 2014).

must either retain an attorney to file a petition for discretionary review on his behalf or he must file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days from the date of this court's judgment or the date the last timely motion for rehearing was overruled by this court. *See* TEX. R. APP. P. 68.2(a). Any petition for discretionary review must be filed with the Texas Court of Criminal Appeals. *See* TEX. R. APP. P. 68.3(a). Any petition for discretionary review should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. *See In re Schulman*, 252 S.W.3d at 408 n.22.

Opinion delivered August 23, 2017.

*Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.*

(DO NOT PUBLISH)



## COURT OF APPEALS

### TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

#### JUDGMENT

AUGUST 23, 2017

NO. 12-16-00219-CR

**DARIUS DUANE FAGAN,**  
Appellant  
V.  
**THE STATE OF TEXAS,**  
Appellee

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Appeal from the Criminal District Court 2  
of Tarrant County, Texas (Tr.Ct.No. 1345905W)

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THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

By *per curiam* opinion.  
*Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.*