

**NO. 12-17-00081-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

*TIMOTHY ALAN WELDY,*  
*APPELLANT*

§ *APPEAL FROM THE 173RD*

*V.*

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,*  
*APPELLEE*

§ *HENDERSON COUNTY, TEXAS*

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***MEMORANDUM OPINION***  
***PER CURIAM***

Timothy Alan Weldy appeals his conviction for aggravated sexual assault of a child. 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). We affirm.

**BACKGROUND**

Appellant was indicted for aggravated sexual assault of a child.<sup>1</sup> Appellant made an open plea of “guilty” to the offense. The trial court accepted Appellant’s plea, and the matter proceeded to a bench trial on punishment. Pursuant to an agreement between Appellant and the State, the trial court considered an unadjudicated offense in assessing Appellant’s punishment.<sup>2</sup> The trial court sentenced Appellant to imprisonment for forty-five years. This appeal followed.

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<sup>1</sup> See TEX. PENAL CODE ANN. § 22.021 (West Supp. 2017).

<sup>2</sup> See TEX. PENAL CODE ANN. § 12.45 (West 2011).

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 reviewed the record, is well acquainted with the facts of this case, and has found no error to present for our review. In compliance with *Anders*, *Gainous*, and *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. [Panel Op.] 1978), Appellant’s brief presents a chronological summation of the procedural history of the case and further states that Appellant’s counsel is unable to raise any arguable issues for appeal.<sup>3</sup> We likewise have reviewed the record for reversible error and have found none.

CONCLUSION

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. Having done so, we agree with Appellant’s counsel that the appeal is wholly frivolous. Accordingly, we *grant* counsel’s motion for leave to withdraw and *affirm* the trial court’s judgment. All pending motions are denied.

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 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.

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<sup>3</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). Moreover, Appellant filed a motion seeking access to the record, which we granted. The trial court and deputy court clerk each filed letters certifying that they mailed Appellant a copy of the record. Appellant was given time to file his own brief. The time for filing such a brief has expired and no pro se brief has been filed.

Opinion delivered March 7, 2018.

*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

MARCH 7, 2018

NO. 12-17-00081-CR

**TIMOTHY ALAN WELDY,**  
Appellant  
V.  
**THE STATE OF TEXAS,**  
Appellee

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Appeal from the 173rd District Court  
of Henderson County, Texas (Tr.Ct.No. CR16-0022-173)

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THIS CAUSE came to be heard on the appellate record and brief 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.*