



NUMBER 13-19-00224-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JOSE SOTELO,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 105th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

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

On August 16, 2018, appellant Jose Sotelo was indicted for two counts of aggravated assault with a deadly weapon against a public servant, a first-degree felony. See TEX. PENAL CODE ANN. § 22.02(b)(2)(B). Sotelo entered into a plea agreement with the State and was placed into deferred adjudication community supervision for five years.

On February 18, 2019, the State filed a motion to revoke Sotelo's community supervision. After a hearing, the trial court revoked Sotelo's community supervision, adjudicated him guilty, and assessed punishment at twenty-five years' imprisonment in the Institutional Division of the Texas Department of Criminal Justice. See *id.* § 12.32. Sotelo filed a motion for new trial, which the trial court denied.

Sotelo appeals, and his 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*, Sotelo's court-appointed appellate counsel has filed a motion to withdraw and a brief in support thereof in which he states that he has diligently reviewed the entire record and has found no non-frivolous grounds for appeal. 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) ("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, 318–19 (Tex. Crim. App. 2014), Sotelo's counsel carefully discussed why, under controlling authority, there is no reversible error

in the trial court's judgment. Counsel has informed this Court in writing that counsel has: (1) notified Sotelo that counsel has filed an *Anders* brief and a motion to withdraw; (2) provided Sotelo with copies of both pleadings; (3) informed Sotelo of his rights to file a pro se response,¹ review the record preparatory to filing that response, and seek discretionary review if the court of appeals concludes that the appeal is frivolous; and (4) provided Sotelo with a form motion for pro se access to the appellate record, lacking only Sotelo's signature and the date and including the mailing address for the court of appeals, with instructions to file the motion within ten days. See *Anders*, 386 U.S. at 744; *Kelly*, 436 S.W.3d at 318–19; see also *In re Schulman*, 252 S.W.3d at 409 n.23. An adequate amount of time has passed, and Sotelo 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 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.

¹ 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) (quoting *Wilson v. State*, 955 S.W.2d 693, 696–97 (Tex. App.—Waco 1997, no pet.)).

III. MOTION TO WITHDRAW

In accordance with *Anders*, Sotelo's attorney has asked this Court for permission to withdraw as counsel for appellant. See *Anders*, 386 U.S. at 744; see also *In re Schulman*, 252 S.W.3d at 408 n.17 ("[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." (citing *Jeffery v. State*, 903 S.W.2d 776, 779–80 (Tex. App.—Dallas 1995, no pet.) (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 Sotelo and to advise him of his right to file a petition for discretionary review.² 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.

DORI CONTRERAS
Chief Justice

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

Delivered and filed the
18th day of June, 2020.

² No substitute counsel will be appointed. Should Sotelo wish to seek 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. Any 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.