



**NUMBER 13-19-00046-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**FRANK ADEL MARTINEZ,**

**Appellant,**

**v.**

**THE STATE OF TEXAS,**

**Appellee.**

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**On appeal from the 206th District Court  
of Hidalgo County, Texas.**

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**MEMORANDUM OPINION**

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

On July 5, 2016, appellant Frank Adel Martinez pleaded guilty to one count of sexual assault, a second-degree felony.<sup>1</sup> See TEX. PENAL CODE ANN. § 22.011(A)(1). The trial court placed appellant on seven years' deferred adjudication community

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<sup>1</sup> The State dismissed a second count of sexual assault in exchange for the plea.

supervision. On December 21, 2018, the trial court held a hearing on the State's motion to adjudicate. The motion to adjudicate alleged eighteen violations of the conditions of his probation, including the failure to pay certain fees, testing positive multiple times for controlled substances, failing to complete his sex offender treatment program, and possessing or viewing illicit material. The case was continued to January 7, 2019, where the trial court ultimately pronounced appellant guilty and assessed punishment at seven years' imprisonment in the Texas Department of Criminal Justice—Correctional Institution Division.

Appellant'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*, appellant's court-appointed appellate counsel has filed a motion to withdraw and a brief in support thereof in which she states that she 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), appellant’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 appellant that counsel has filed an *Anders* brief and a motion to withdraw; (2) provided appellant with copies of both pleadings; (3) informed appellant of appellant’s rights to file a pro se response,<sup>2</sup> 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 appellant with a form motion for pro se access to the appellate record, lacking only appellant’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 time has passed, and appellant has not filed a request for the record or 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

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<sup>2</sup> 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.)).

that would arguably support an appeal. *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*, appellant’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 (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 appellant and to advise him of his right to file a petition for discretionary review.<sup>3</sup> 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).

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<sup>3</sup> No substitute counsel will be appointed. Should appellant 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.

#### **IV. CONCLUSION**

We affirm the trial court's judgment.

LETICIA HINOJOSA  
Justice

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

Delivered and filed the  
14th day of May, 2020.