

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-19-00870-CR**

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**Vincent Anthony Ascitutto, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE 35TH DISTRICT COURT OF MILLS COUNTY  
NO. 3356, THE HONORABLE STEPHEN ELLIS, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

Vincent Anthony Ascitutto was charged with the third-degree felony offense of driving while intoxicated with two prior driving-while-intoxicated convictions. *See* Tex. Penal Code §§ 49.04, .09. The indictment included an enhancement paragraph alleging Ascitutto was previously “convicted of the felony offense of Obstruction or Retaliation,” which increased the punishment range to that of a second-degree felony. *See id.* §§ 12.42., 36.06. Ascitutto entered an open plea of guilty to the charged offense, judicially confessed to “each and every act” alleged in the indictment, and stipulated that “[a]ll enhancement and habitual allegations” were true. During the subsequent plea and punishment hearing, the State called law-enforcement officers who testified that they responded to a one-vehicle accident involving Ascitutto, that they could smell alcohol emitting from him, that his speech was slurred, that his eyes were bloodshot, that he exhibited all six indicators of intoxication during a horizontal-gaze-nystagmus test, that he exhibited four of eight possible indicators of intoxication during the walk-and-turn test,

and that he exhibited three of four possible indicators of intoxication during the one-leg stand, and that testing performed on a sample of his blood showed that he had a blood-alcohol concentration of 0.12. In addition, the district court admitted into evidence the following certified judgments of conviction for offenses beyond those alleged in the indictment: two judgments of conviction for possession of a controlled substance, a judgment of conviction for criminal mischief, and a judgment of conviction for assault family violence. At the end of the hearing, the district court accepted Ascitutto's guilty plea, found the enhancement allegation to be true, and sentenced him to five years' imprisonment. *See id.* § 12.33. Ascitutto appeals the district court's judgment of conviction.

Ascitutto's court-appointed attorney on appeal has filed a motion to withdraw supported by a brief concluding that the appeal is frivolous and without merit. Counsel's brief meets the requirements of *Anders v. California* by presenting a professional evaluation of the record and demonstrating that there are no arguable grounds to be advanced. *See* 386 U.S. 738, 744-45 (1967); *Garner v. State*, 300 S.W.3d 763, 766 (Tex. Crim. App. 2009); *see also Penson v. Ohio*, 488 U.S. 75, 81-82 (1988) (explaining that *Anders* briefs serve purpose of "assisting the court in determining both that counsel in fact conducted the required detailed review of the case and that the appeal is . . . frivolous"). Ascitutto's counsel has represented to the Court that she provided copies of the motion and brief to him; advised him of his right to examine the appellate record, file a pro se brief, and pursue discretionary review following the resolution of the appeal in this Court; and provided him with a form motion for pro se access to the appellate record along with the mailing address of this Court. *See Kelly v. State*, 436 S.W.3d 313, 319-20 (Tex. Crim. App. 2014). Ascitutto has not requested a copy of the appellate record or filed a pro se brief, and the time permitted to file a brief has expired.

We have independently reviewed the record and have found nothing that might arguably support the appeal. *See Anders*, 386 U.S. at 744; *Garner*, 300 S.W.3d at 766. We agree with counsel that the appeal is frivolous and without merit. We grant counsel's motion to withdraw and affirm the district court's judgment of conviction.

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Thomas J. Baker, Justice

Before Chief Justice Rose, Justices Baker and Triana

Affirmed

Filed: June 3, 2020

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