

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00790-CR

Alex Jonathon Cabello, Appellant

v.

The State of Texas, Appellee

**FROM THE 340TH DISTRICT COURT OF TOM GREEN COUNTY
NO. C-17-0173-SA, THE HONORABLE JAY K. WEATHERBY, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Alex Jonathon Cabello was placed on community supervision for ten years after a jury found him guilty of sexual assault, *see* Tex. Penal Code § 22.011(a)(1), and assessed his punishment at ten years' confinement in the Texas Department of Criminal Justice, *see id.* §§ 12.33, 22.011(f), but recommended that the sentence be suspended and that appellant be placed on community supervision, *see* Tex. Code Crim. Proc. art. 42A.055. Fifteen months later, the trial court granted the State's motion to revoke after finding that appellant had violated the conditions of his supervision and imposed the previously assessed ten-year sentence.¹ *See id.* arts. 42A.751(d), 42A.755.

¹ The State's motion to revoke, filed one year after appellant was placed on community supervision, contained twelve allegations of violations of supervision conditions, which included appellant's failure to pay supervision fees, failure to submit a statement of inability to pay when he failed to pay supervision fees, failure to permit a home visit by his supervision officer, failure to make diligent efforts to secure suitable employment, failure to provide proof of his formal

Appellant’s court-appointed attorney has filed a motion to withdraw supported by a brief concluding that the appeal is frivolous and without merit. The brief meets the requirements of *Anders v. California* by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See Anders v. California*, 386 U.S. 738, 744 (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).

Appellant’s counsel has certified to this Court that she sent copies of the motion and brief to appellant, advised appellant of his right to examine the appellate record and file a pro se response, and provided a motion to assist appellant in obtaining the record. *See Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014); *see also Anders*, 386 U.S. at 744. Appellant did not file a motion requesting access to the record, and, to date, has not filed a pro se response or requested an extension of time to file a response.

We have conducted an independent review of the record—including the record of the revocation proceedings and appellate counsel’s brief—and find no reversible error. *See Anders*, 386 U.S. at 744; *Garner*, 300 S.W.3d at 766; *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). We agree with counsel that the record presents no arguably meritorious

education level, failure to perform community-service work, failure to report his change of address to his supervision officer, failure to report by mail to his supervision officer, failure to pay the sex-offender therapy program fees, and failure to comply with sex offender registration requirements. At the conclusion of the revocation hearing, after both the State and appellant presented evidence, the trial court found that appellant had violated the conditions of his supervision as alleged, finding all twelve of the alleged violations to be true.

grounds for review and the appeal is frivolous. Counsel's motion to withdraw is granted.² The trial court's judgment revoking community supervision is affirmed.

Edward Smith, Justice

Before Justices Goodwin, Kelly, and Smith

Affirmed

Filed: July 3, 2020

Do Not Publish

² Appointed counsel certified to this Court that she advised appellant of his right to seek discretionary review pro se should this Court declare his appeal frivolous. In addition, appellant was informed of his right to file a pro se petition for discretionary review upon execution of the *Trial Court's Certification of Defendant's Right of Appeal*. Nevertheless, appointed counsel must comply with Rule 48.4 of the Texas Rules of Appellate Procedure, which mandates that counsel send appellant a copy of this Court's opinion and judgment along with notification of his right to file a pro se petition for discretionary review within five days after this opinion is handed down. *See* Tex. R. App. P. 48.4; *see In re Schulman*, 252 S.W.3d 403, 411 n.35 (Tex. Crim. App. 2008). The duty to send appellant a copy of this Court's decision is an informational one, not a representational one. *See In re Schulman*, 252 S.W.3d at 411 n.33. It is ministerial in nature, does not involve legal advice, and exists after this Court has granted counsel's motion to withdraw. *See id.*