

ANDERS GUIDELINES — CRIMINAL CASES¹

Section I addresses the guidelines for *Anders* briefs submitted in guilty plea cases.

Section II addresses the guidelines for *Anders* briefs submitted in jury or bench trial cases.

Section III addresses the ***Educational Burdens*** when filing an *Anders* brief, including the requirement of notifying your client of his/her right to access the appellate record.

SECTION I

***Anders* Briefs in Guilty Plea Cases**

If you plan to file a motion to withdraw and a supporting *Anders* brief in a guilty plea case, please take note of the following information.

As with any brief, compliance with Texas Rule of Appellate Procedure 38 is required.

To assure and demonstrate compliance with *Anders v. California*, 386 U.S. 738 (1967), the *Anders* brief in support of a motion to withdraw in a guilty plea case ordinarily should contain a discussion of the following:

- (1) the trial court's compliance with Texas Code of Criminal Procedure article 26.13;
- (2) whether appellant was mentally competent when the trial court accepted his/her plea;
- (3) whether appellant's plea was freely and voluntarily made;
- (4) the adequacy of the sentence; and

¹ Counsel should file a motion to withdraw and a supporting *Anders* brief "if counsel finds his case to be wholly frivolous, after a conscientious examination of it." *Anders v. California*, 386 U.S. 738, 744 (1967). Employing the *Anders* procedure, Texas courts have regularly determined that an appeal is frivolous if it presents no reversible error, meaning there is nothing in the record that could arguably support the reversal, in whole or in part, of an appellant's conviction or punishment. *See Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005). This does not mean that counsel can ignore the nonreversible errors in an *Anders* brief. This Court and many of the other intermediate appellate courts have held that, within the context of *Anders*, appellate courts have the authority to reform the judgment, and affirm as modified, in cases where nonreversible error is alleged. *Allison v. State*, 609 S.W.3d 624, 628 (Tex. App.—Waco 2020, order) (per curiam), *disp. on merits*, 654 S.W.3d 794 (Tex. App.—Waco 2022, no pet.). We generally refer to an *Anders* brief that also asserts nonreversible error as an *Allison* brief. *See Cummins v. State*, 646 S.W.3d 605, 614 (Tex. App.—Waco 2022, pet. ref'd) (referring to *Allison*, 609 S.W.3d at 628).

- (5) any errors in the judgment.

See the ***Anders* Checklist** for a more complete list of the recommended items of discussion.

SECTION II

***Anders* Briefs in Jury and Bench Trial Cases**

If you plan to file a motion to withdraw and a supporting *Anders* brief in a jury or bench trial case, please take note of the following information.

As with any brief, compliance with Texas Rule of Appellate Procedure 38 is required.

To assure and demonstrate compliance with the holdings of *Anders v. California*, 386 U.S. 738 (1967), *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978), and *Stafford v. State*, 813 S.W.2d 503 (Tex. Crim. App. 1991), the *Anders* brief in support of a motion to withdraw ordinarily should contain a discussion of the following:

- (1) sufficiency of the indictment;
- (2) any adverse pretrial rulings affecting the course of the trial (*e.g.*, motions to suppress, motions in limine, motions to quash, speedy trial motions);
- (3) any adverse rulings during trial on objections or motions (*e.g.*, objections regarding the admission or exclusion of evidence, objections premised on prosecutorial or judicial misconduct, mistrial motions);
- (4) any adverse rulings on post-trial motions (*e.g.*, motions for a new trial or post-judgment verdict of acquittal);
- (5) jury selection [N/A in bench trial];
- (6) jury instructions [N/A in bench trial];
- (7) sufficiency of the evidence, which would include a recitation of the elements of the offense(s) and facts and evidence adduced at trial relevant to the offense(s) of conviction;
- (8) any errors for which there were no objections but may rise to the level of fundamental error;

- (9) calculation of the sentence and the reasonableness of the sentence imposed; and
- (10) any errors in the judgment.

For a more complete list of the recommended items of discussion, see the ***Anders Checklist***. If there are any issues unique to the case not covered by the items listed, those should be discussed as well. You are encouraged to include these items in the brief's Table of Contents, which will assist the Court in conducting its examination of the record.

SECTION III

Educational Burdens and *Pro Se* Access to the Appellate Record

If you file a motion to withdraw and a supporting *Anders* brief, you must fulfill the following Educational Burdens:

- (1) notify your client of the motion to withdraw and supporting *Anders* brief and provide your client with a copy of each;
- (2) inform your client of his/her right to file a *pro se* response;
- (3) inform your client of his/her right to review the record in preparation for filing his/her *pro se* response;
- (4) provide your client with a copy of the record (***strongly encouraged***) or with a form motion for *pro se* access to the appellate record (and the mailing address for the court of appeals); and
- (5) inform your client of his/her right to file a petition for discretionary review with the Texas Court of Criminal Appeals should this Court deny your client relief on appeal.

See Kelly v. State, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014); *Meza v. State*, 206 S.W.3d 684, 689 n.23 (Tex. Crim. App. 2006); *Stanley v. State*, 523 S.W.3d 122, 124–25 (Tex. App.—Waco 2015, order) (per curiam); *Wilson v. State*, 955 S.W.2d 693, 697 (Tex. App.—Waco 1997, no pet.); *Johnson v. State*, 885 S.W.2d 641, 646 (Tex. App.—Waco 1994, pet. ref'd).

To show compliance with these Educational Burdens, you must provide this Court with either a copy of the transmittal letter sent to your client or a separate Certificate of Counsel. The transmittal letter, if provided, should not include any communication

the disclosure of which would violate the attorney/client privilege. A Certificate of Counsel is preferred.

Examples of a form motion for pro se access to the appellate record, transmittal letters, and a Certificate of Counsel are included with these Guidelines.

Once you have filed the motion to withdraw and supporting *Anders* brief and have met the above Educational Burdens, your client will have 30 days within which to file a *pro se* brief or other response or a motion for an extension of time in which to file a brief or other response.