

Preliminary Opinion and Opinion Filed June 15, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-00178-CR

**TRADAREON JAMEL CHOICE, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 6
Dallas County, Texas
Trial Court Cause No. F17-75538-X**

MEMORANDUM OPINION

Before Justices Myers, Whitehill, and Pedersen, III
Opinion by Justice Pedersen, III

A jury convicted appellant of felony murder after a five-day trial on guilt-innocence. And after two more days of testimony, the trial court assessed appellant's punishment at life in prison. The trial court appointed appellate counsel for appellant, and she filed an *Anders* brief on his behalf, representing that she had "diligently reviewed the entire record and the law applicable thereto and, in her opinion, the appeal is without merit and wholly frivolous in that the record reflects no reversible error."

An *Anders* brief is a brief filed in support of an appointed attorney's motion to withdraw from an appeal that the attorney has concluded, after conscientious examination of the entire record, is a frivolous appeal. *Anders v. California*, 386 U.S. 738, 744 (1967). Underlying the *Anders* procedure is the constitutional requirement of substantial equality and fair process, which can only be attained if appellate counsel acts in the role of an active advocate in behalf of his client. *See id.* Ultimately, an appropriate *Anders* brief provides the court of appeals with an assurance of integrity in the criminal proceedings in the trial courts that the court of appeals supervises.

To that end, an *Anders* brief must “discuss the evidence adduced at the trial, point out where pertinent testimony may be found in the record, refer to pages in the record where objections were made, the nature of the objection, the trial court's ruling, and discuss either why the trial court's ruling was correct or why the appellant was not harmed by the ruling of the court.” *High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. 1978). In addition to setting out an attorney's due diligence investigation on behalf of the client, the *Anders* brief has an additional use for an appellate court, providing it “with a roadmap for their review of the record because the court itself must be assured that the attorney has made a legally correct determination that the appeal is frivolous.” *In re Schulman*, 252 S.W.3d 403, 407 (Tex. Crim. App. 2008).

When appellate counsel fails to identify any objections in the record and to discuss why the trial court's ruling was correct or why the appellant was not harmed

by the ruling, we are left with little or no confidence in counsel's conclusion that the appeal is frivolous. *See Montano v. State*, No. 05-19-00463-CR, 2020 WL 1283919, at *2 (Tex. App.—Dallas Mar. 18, 2020, no pet.) (mem. op., not designated for publication).

In this case, appellate counsel has completely failed to identify and discuss any objection posed during the trial of this case. We view such a failure as evidence that counsel failed to make a thorough and professional evaluation of the record. *See Crowe v. State*, 595 S.W.3d 317, 320 (Tex. App.—Dallas 2020, no pet.).

Our standard practice in such a case would have us strike the *Anders* brief, grant counsel's motion to withdraw, and abate the case while the trial court appoints new appellate counsel. *See id.* at 321. However, our review of the brief and record in this case, as well as the *Anders* briefs filed by this attorney in multiple appeals, has caused us concern that appointed counsel has been unaware of the requirements of her appointment to these cases.

Accordingly, by separate order, we strike the brief filed in this case. We order appellant's counsel, within 30 days of the date of this opinion and order, either (1) to file a brief that addresses arguable issues found within the record, or (2) if a thorough and professional review of the record identifies no such arguable issues, to file an *Anders* brief that complies with the requirements of *High v. State*, 573 S.W.2d at 813. Any motion for an extension of time to comply with our order will be looked upon with disfavor.

/Bill Pedersen, III//
BILL PEDERSEN, III
JUSTICE

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TEX. R. APP. P. 47