

ANDERS BRIEFS IN CRIMINAL CASES

An attorney filing an *Anders* brief is responsible for demonstrating compliance with *Anders v. California*, 386 U.S. 738 (1967), and all relevant binding case law including *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). Court-appointed counsel should refer to anything in the record that might arguably support the appeal.

In *High*, the Court of Criminal Appeals held that in contested cases where court-appointed counsel files an *Anders* brief, appellate courts should not accept such briefs unless they:

- (1) discuss the evidence adduced at the trial,
- (2) point out where pertinent testimony may be found in the record, and
- (3) 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. 573 S.W.2d at 813.

As stated above, an *Anders* brief should address any potentially arguable issues with an explanation of why each issue is not meritorious. In preparing an *Anders* brief for a criminal appeal, you should consider the following topics, to the extent they are relevant, including whether relevant preservation requirements were met:

GUILTY PLEA — TEX. CODE CRIM. PROC. ANN. ART. 26.13	
I. Admonishments	
(1) range of punishment	
(2) recommendation of the prosecuting attorney as to punishment is not binding on the court.	
(3) in plea agreement, the trial court must give its permission to the defendant before the defendant may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial;	
(4) consequences of non-citizenship, <i>see Padilla v. Kentucky</i> , 559 U.S. 356 (2010)	
(5) sex offender registration requirements	
(6) after satisfactorily fulfilling the conditions of community supervision and on expiration of the period of community supervision, the court is authorized to release the defendant from the penalties and disabilities resulting from the offense	
II. Pretrial	
(1) sufficiency of the indictment	
(2) any adverse pretrial rulings	

III. Acceptance of plea defendant is mentally competent and plea is free and voluntary	
IV. Punishment (1) adverse rulings regarding evidence or other issues (2) calculation and reasonableness of sentence	
JURY OR BENCH TRIAL ON PLEA OF NOT GUILTY	
I. Pretrial	
(1) sufficiency of the charging instrument (indictment or complaint)	
(2) any adverse pretrial rulings	
II. Trial	
(1) jury selection, if applicable	
(2) any adverse rulings during trial on objections or motions (for both guilt-innocence phase and punishment phase)	
(3) sufficiency of the evidence, which would include recitation of elements and evidence adduced at trial	
(4) jury instructions, if applicable	
(5) any error not objected to that may rise to the level of fundamental error	
III. Post-trial	
(1) any adverse rulings on post-trial motions	
(2) calculation and reasonableness of sentence	

Although the list above may be used as a resource in the preparation of an *Anders* brief, the list is not legal authority.

Additionally, a court-appointed attorney who files an *Anders* brief after concluding an appeal in a criminal case is frivolous must:

- (1) notify his client of the motion to withdraw and the accompanying *Anders* brief, providing him a copy of each,
- (2) inform his client of his right to file a pro se response and of his right to review the record preparatory to filing that response,
- (3) inform his client of his pro se right to seek discretionary review should the court of appeals declare his appeal frivolous, and
- (4) take concrete measures to initiate and facilitate the process of actuating his client's right to review the appellate record, if that is what his client wishes. *Kelly v. State*, 436 S.W.3d 313, 319 (Tex. Crim. App. 2014).