

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

Richard Santa Ana v. The State of Texas

No. 03-25-00928-CR · No. No. 03-25-00928-CR · Decided June 4, 2026

SUMMARY

The Texas Court of Appeals, Third District, abated and remanded an Anders appeal involving convictions for aggravated sexual assault of a minor and indecency with a child. The court directed the trial court to determine appropriate safeguards for the appellant’s access to the appellate record, verify whether a nunc pro tunc judgment accurately reflected the guilty plea, and prepare supplemental records before July 1, 2026.

CASE DETAILS

COURT	Texas Court of Appeals, Third District, at Austin
WRITING FOR THE COURT	Per Curiam; Chief Justice Byrne; Justice Theofanis; Justice Crump
JURISDICTION	Texas Court of Appeals, Third District, Austin
DECIDED	June 4, 2026
DOCKET	No. 03-25-00928-CR
DISPOSITION	remanded
PROCEDURAL POSTURE	Anders appeal in which appointed appellate counsel moved to withdraw on the ground that the appeal was frivolous. The court abated the appeal and remanded to the trial court for a hearing concerning appellant's access to the appellate record and the accuracy of a nunc pro tunc judgment.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Richard Santa Ana v. The State of Texas

TOPICS

- appellate procedure
- criminal procedure
- right to counsel

PRACTICE AREAS

- criminal appellate procedure
- Anders appeals
- criminal procedure

QUESTIONS PRESENTED

1. What safeguards, if any, should govern appellant's access to the appellate record in an Anders appeal when the record contains photographs of the victim?
2. Whether the nunc pro tunc judgment of conviction for indecency with a child accurately reflects the record regarding appellant's guilty plea.

HOLDINGS

1. The appeal must be abated and remanded for the trial court to conduct a hearing and determine appropriate precautionary measures for providing appellant access to the appellate record, including sensitive photographs, while satisfying Anders requirements.
2. On remand, the trial court must consider whether the guilty plea stated in the nunc pro tunc judgment for indecency with a child accurately comports with the record and must issue a new nunc pro tunc judgment if it does not.

KEY QUOTATIONS

“Accordingly, under these circumstances, we believe it is prudent to abate the appeal and remand the case to the trial court for a hearing to consider what, if any, precautionary measures should be taken when providing appellant access to the appellate record.” (at 2)

FACTUAL BACKGROUND

The appeal involves convictions for aggravated sexual assault of a minor and indecency with a child. Appellant sought access to the entire appellate record, which contained photographs of the victim, after appointed counsel filed an Anders motion to withdraw. The nunc pro tunc judgment for indecency with a child included a guilty plea whose accuracy in relation to the record required review.

PROCEDURAL HISTORY

Appellant's appointed counsel filed an Anders motion to withdraw and an accompanying brief. Appellant timely requested access to the entire appellate record, which included photographs of the victim. After previously directing the trial-court clerk to provide the record, the appellate court set aside that order and abated and remanded the appeal for the trial court to determine appropriate safeguards, verify access to the record, and examine the accuracy of the nunc pro tunc judgment. The appeal will be reinstated after supplemental records are forwarded to the appellate court.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court shall conduct a hearing to determine precautionary measures for providing appellant access to the appellate record; make appropriate findings and recommendations; order the manner in which the trial-court clerk will provide the record; require provision of the record within ten days of the hearing; and direct the clerk

to provide written verification to the appellate court of the date and manner of access. The trial court shall also determine whether the guilty plea in the nunc pro tunc judgment for indecency with a child accurately reflects the record and issue a new nunc pro tunc judgment if necessary. The hearing must be transcribed, and appropriate supplemental clerk's and reporter's records must be forwarded to the appellate court no later than July 1, 2026. The appeal will then be reinstated.

CASES CITED

- *Anders v. California*, 386 U.S. 738, 744 (1967)
- *Kelly v. State*, 436 S.W.3d 313, 319-20 (Tex. Crim. App. 2014)
- *Kelly v. State*, 436 S.W.3d 313, 321 & n.24 (Tex. Crim. App. 2014)
- *Santa Ana v. State*, No. 03-25-00928-CR, 2026 WL 1501155, at *1 (Tex. App.—Austin May 27, 2026, order)
- *Vaccaro v. State*, 195 S.W.3d 351, 353 (Tex. App.—Waco 2006, order)

OPINION

Richard Santa Ana v. the State of Texas

PER CURIAM.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-25-00928-CR

Richard Santa Ana, Appellant v. The State of Texas, Appellee

FROM THE 428TH DISTRICT COURT OF HAYS COUNTY

NO. CR-24-0427-D, THE HONORABLE JOE POOL, JUDGE PRESIDING

ORDER AND MEMORANDUM OPINION

PER CURIAM

Appellant's court-appointed counsel has filed a motion to withdraw supported by a brief concluding that the instant appeal is frivolous and without merit. See *Anders v. California*, 386 U.S. 738, 744 (1967). Appellant's counsel has certified to the Court that he provided 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 supplied appellant with a form motion for pro se access to the appellate record. See *Kelly v. State*, 436 S.W.3d 313, 319-20 (Tex. Crim. App. 2014). Appellant has timely filed the motion requesting access to the appellate record with this Court. Previously, we granted the motion and directed the clerk of the trial court to provide a copy of the reporter's record and the clerk's record to appellant and to inform this Court of the date and manner in which the appellate record was provided. See *id.* at 321; *Santa Ana v. State*, No. 03-25-00928-CR, 2026 WL 1501155, at *1 (Tex. App.—Austin May 27, 2026, order). Following the issuance of our order, the trial court clerk contacted the clerk of this Court to inquire whether all of the exhibits should be copied and sent to appellant. Having considered the inquiry, we set aside our previous order to the trial court clerk. This appeal involves the offenses of aggravated sexual assault of a minor and indecency with a child, see Tex. Penal Code §§ 21.11, 22.021, and appellant has filed a pro se motion to access the entire record, which contains photos of the victim. Accordingly, under these

circumstances, we believe it is prudent to abate the appeal and remand the case to the trial court for a hearing to consider what, if any, precautionary measures should be taken when providing appellant access to the appellate record. See Kelly, 436 S.W.3d at 321 & n.24 (noting that one court of appeals sends record in Anders cases to warden of prison with instructions to allow defendant supervised access and indicating that this complies with Anders requirements); Vaccaro v. State, 195 S.W.3d 351, 353 (Tex. App.—Waco 2006, order) (placing videotape in custody of warden, ordering warden to make it available to defendant for taking notes, and requiring Texas Department of Criminal Justice to retain it before returning it to trial court after defendant filed brief). On remand, the trial court shall conduct a hearing to consider what measures should be taken. The court shall make appropriate findings and recommendations and then issue an order directing the manner in which the clerk of the trial court will provide the appellate record to appellant, requiring the appellate record to be provided within ten days of the hearing, and directing the trial court clerk to provide written verification to this Court of the date and manner in which the appellate record was made available to appellant. See Kelly, 436 S.W.3d at 321. 2 At the hearing, the trial court shall also consider whether the plea of guilty included in the nunc pro tunc judgment of conviction for indecency with a child accurately comports with the record and, if not, shall issue a new nunc pro tunc judgment for that offense. Following the hearing, which shall be transcribed, the trial court shall order the appropriate supplemental clerk's and reporter's records, including all findings, orders, and judgments, to be prepared and forwarded to this Court no later than July 1, 2026. Once the supplemental records have been forwarded to this Court, the appeal will be reinstated. It is ordered on June 4, 2026. Before Chief Justice Byrne, Justices Theofanis and Crump Abated and Remanded Filed: June 4, 2026 Do Not Publish 3