

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0589

STATE OF MONTANA,

Plaintiff and Appellee,

v.

O R D E R

TIMOTHY ERIC RITESMAN,

Defendant and Appellant.

Penelope S. Strong, counsel for Appellant Timothy Eric Ritesman, filed a motion and brief asking to be allowed to withdraw from this appeal on grounds that Strong has been unable to find any nonfrivolous issues to raise on appeal, pursuant to § 46-8-103(2), MCA, and *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967).

We have determined that the *Anders* brief does not meet *Anders*' requirements. The purpose of *Anders* is to guarantee "substantial equality and fair process" to indigent appellants by requiring appointed counsel to act "in the role of an active advocate in behalf of his client." *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400. This requires that appointed counsel "support his client's appeal to the best of his ability." *Anders*, 386 U.S. at 744, 87 S. Ct. at 1396. Section § 46-8-103(2), MCA, which codifies *Anders*, requires that counsel wishing to withdraw as appellate defense counsel advise this Court that the appeal would be wholly frivolous and support the request with "a memorandum discussing any issues that arguably support an appeal." The statute does not contemplate that counsel shall argue *against* the client's appeal. Here, counsel has not complied with § 46-18-103(2), MCA, in that counsel has affirmatively argued against this appeal.

IT IS THEREFORE ORDERED that counsel's motion for permission to withdraw is DENIED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that counsel's *Anders* brief is STRICKEN FROM THE RECORD.

IT IS FURTHER ORDERED that counsel shall have 30 days from the date of this order in which to file either an *Anders* brief that complies with the requirements of *Anders* and § 46-8-103(2), MCA, or an Opening Brief.

IT IS FURTHER ORDERED that the Appellate Defender may assign new counsel if the Appellate Defender determines that new counsel is warranted.

The Clerk is directed to provide copies of this Order to all counsel of record and to Ritesman personally.