



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NOS. PD-0666-20 & PD-0667-20

THOMAS ELIJAH ATKINS, Appellant

V.

THE STATE OF TEXAS

**ON STATE'S PETITION FOR DISCRETIONARY REVIEW
FROM THE ELEVENTH COURT OF APPEALS
EASTLAND COUNTY**

Per curiam. YEARY, J., filed a dissenting opinion in which SLAUGHTER, J., joined.

OPINION

Appellant was convicted of possession of a controlled substance and failure to appear; he was sentenced to 18 months and two years, respectively. In the bill of costs in each case, the trial court assessed Appellant a \$25 time payment fee. See TEX. LOCAL GOV'T CODE §

133.103. On appeal, the Court of Appeals struck a portion of that fee as being unconstitutional. *Atkins v. State*, Nos. 11-19-00354-CR & 11-19-00355-CR, 2020 Tex. App. LEXIS 4709 (Tex. App. – Eastland June 25, 2020).

The State has filed a petition for discretionary review challenging the court’s constitutional analysis. We recently handed down our opinion in *Dulin v. State*, Nos. PD-0856-19 & PD-0857-19, 2021 Tex. Crim. App. LEXIS 273 (Tex. Crim. App. Mar. 31, 2021), in which we held that the time payment fee was assessed prematurely because the pendency of appeal suspends the obligation to pay court costs. As a result, there was no need to reach the State’s constitutional arguments.

We grant review on our own motion of the following ground:

Should the “Time Payment Fee” be struck as prematurely assessed?

Addressing that ground in light of *Dulin*, we vacate the judgment of the Court of Appeals, and remand this case to the Court of Appeals for proceedings consistent with this opinion.

The State’s petition is refused.

DATE DELIVERED: May 12, 2021

DO NOT PUBLISH