



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-16-00178-CR

ERIK LUIS SANTIAGO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 3
Dallas County, Texas
Trial Court No. F-1675360-J

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

Erik Luis Santiago was convicted by a Dallas County district court¹ in its cause no. F-1675360-J of theft of property valued at \$2,500.00 or more but less than \$30,000.00 and, after enhancement by two prior state jail felony convictions, was sentenced to ten years' imprisonment, to run concurrently with sentences in companion cases. This case was tried with three companion cases, which are the subject of other appeals pending before this Court.² Santiago filed a single, consolidated brief covering all four appeals, in which he contends that the sentence he received is illegal because (1) the two 2014 state jail convictions used to enhance his punishment should have been treated as one state jail felony conviction and (2) the use of his 2014 state jail conviction for theft of services violated the prohibition against ex post facto laws.

The argument raised in this appeal is based exclusively on the argument brought before this Court in the companion appeal styled *Santiago v. State*, cause number 06-16-00175-CR. In our opinion of this date disposing of that appeal, we found that Santiago's claim of an illegal sentence was not apparent on the record. For the reasons set out in that opinion, we overrule Santiago's points of error as they apply to this appeal. However, because the trial court's judgment recites that the degree of the offense was a third degree felony, we modify the judgment to reflect that the offense was a state jail felony.

¹Originally appealed to the Fifth Court of Appeals, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T. CODE ANN. § 73.001 (West 2013). We are unaware of any conflict between precedent of the Fifth Court of Appeals and that of this Court on any relevant issue. *See* TEX. R. APP. P. 41.3.

²In his companion cause numbers 06-16-00175-CR, 06-16-00176-CR, and 06-16-00177-CR, Santiago appeals his convictions for two counts of theft of property, and one count of forgery of a financial instrument.

Although Santiago was convicted of theft of property of a value of \$2,500.00 or more but less than \$30,000.00, a state jail felony,³ the judgment states that the degree of the offense is a third degree felony. We have the authority to modify the judgment to make the record speak the truth when the matter has been called to our attention by any source. *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992); *see* TEX. R. APP. P. 43.2(b). Therefore, we modify the trial court's judgment to reflect that the degree of the offense was a state jail felony.

We affirm the trial court's judgment, as modified.

Josh R Morriss III
Chief Justice

Date Submitted: April 17, 2017
Date Decided: May 18, 2017

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³TEX. PENAL CODE ANN. § 31.03(e)(4) (West Supp. 2016).