



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

No. 06-17-00194-CR

JESSIE DWIGHT BAKER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 115th District Court
Marion County, Texas
Trial Court No. F14342

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

MEMORANDUM OPINION

Jessie Dwight Baker was convicted by a Marion County jury of aggravated sexual assault of a child,¹ and the jury assessed punishment of ten years' incarceration.

Baker's appellate attorney filed a brief setting out the procedural history of the case, summarizing the evidence elicited during the course of the trial court proceedings, and concluding that the appellate record presents no arguable grounds to be raised on appeal. Counsel has filed a brief pursuant to *Anders v. California* and has provided an evaluation of the record explaining why he believes there are no plausible appellate issues to be advanced. *See Anders v. California*, 386 U.S. 738, 743–44 (1967); *In re Schulman*, 252 S.W.3d 403, 406 (Tex. Crim. App. 2008) (orig. proceeding); *Stafford v. State*, 813 S.W.2d 503, 509–10 (Tex. Crim. App. 1991); *High v. State*, 573 S.W.2d 807, 812–13 (Tex. Crim. App. [Panel Op.] 1978). Counsel also filed a motion with this Court seeking to withdraw as counsel in this appeal.

Counsel sent a copy of the brief to Baker, provided him with a copy of the record, and advised Baker of his right to review the record and file a pro se response. On January 22, 2018, we notified Baker that his pro se brief was due on February 21, 2018. Baker has filed neither a pro se response nor a motion requesting an extension of time in which to file such a response.

We have reviewed the entire appellate record and have independently determined that no reversible error exists. Yet, in *Anders* cases, appellate courts “have the authority to reform judgments and affirm as modified in cases where there is non-reversible error.” *Ferguson v. State*,

¹See TEX. PENAL CODE ANN. § 22.021(a)(1)(A), (2)(B) (West Supp. 2017).

435 S.W.3d 291, 294 (Tex. App.—Waco 2014, pet. struck) (comprehensively discussing appellate cases that have modified judgments in *Anders* cases). Here, non-reversible error is found in the trial court’s assessment of attorney fees to cover the costs of Baker’s court-appointed counsel.

The trial court’s judgment ordered Baker to pay \$400.00 in attorney fees for court-appointed counsel. Under Article 26.05(g) of the Texas Code of Criminal Procedure, a trial court has the authority to order the reimbursement of court-appointed attorney fees only if “the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs.” TEX. CODE CRIM. PROC. ANN. art. 26.05(g) (West Supp. 2017). “[T]he defendant’s financial resources and ability to pay are explicit critical elements in the trial court’s determination of the propriety of ordering reimbursement of costs and fees” of legal services provided. *Armstrong v. State*, 340 S.W.3d 759, 765–66 (Tex. Crim. App. 2011) (quoting *Mayer v. State*, 309 S.W.3d 552, 556 (Tex. Crim. App. 2010)).

The record contains a separate finding from the trial court that Baker is indigent and did not have the financial resources to pay the fees of his appointed attorney. However, the order to pay attorney fees is still contained in the court’s judgment and in its bill of costs. Accordingly, we modify the trial court’s judgment by deleting the assessment of attorney fees.

We affirm the trial court's judgment, as modified.²

Josh R. Morriss III
Chief Justice

Date Submitted: March 22, 2018
Date Decided: March 23, 2018

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²Since we agree that this case presents no reversible error, we also, in accordance with *Anders*, grant counsel's request to withdraw from further representation of appellant in this case. *See Anders*, 386 U.S. at 744. No substitute counsel will be appointed. Should appellant desire to seek further review of this case by the Texas Court of Criminal Appeals, he must either retain an attorney to file a petition for discretionary review or file a pro se petition for discretionary review. Any petition for discretionary review (1) must be filed within thirty days from either the date of this opinion or the date on which the last timely motion for rehearing was overruled by this Court, *see* TEX. R. APP. P. 68.2, (2) must be filed with the clerk of the Texas Court of Criminal Appeals, *see* TEX. R. APP. P. 68.3, and (3) should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure, *see* TEX. R. APP. P. 68.4.