



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

No. 06-23-00026-CR

JAVIER MARTINEZ GARCIA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law
Bowie County, Texas
Trial Court No. 22M1063CCL

Before Stevens, C.J., van Cleef and Rambin, JJ.
Memorandum Opinion by Justice Rambin

MEMORANDUM OPINION

Javier Martinez Garcia pled guilty to the offense of driving while intoxicated (DWI) with an alcohol concentration level greater than or equal to 0.15, a class A misdemeanor.¹ The trial court sentenced Garcia to a term of 365 days in the county jail, suspended in favor of eighteen months' community supervision. Among other fees and a \$2,000.00 fine, the trial court imposed a DWI traffic fine of \$6,000.00.²

In the trial court, Garcia objected to the imposition of the DWI traffic fine on the basis that it violates the Separation of Powers Clause of the Texas Constitution and removes from the prosecution the ability to negotiate and determine the amount of fine in a given case. Garcia

¹TEX. PENAL CODE ANN. § 49.04(d) (Supp.).

²Section 709.001 of the Texas Transportation Code provides for the imposition of a fine on conviction of certain DWI offenses. It provides, in pertinent part:

(a) In this section, "offense relating to the operating of a motor vehicle while intoxicated" has the meaning assigned by Section 49.09, Penal Code.

(b) Except as provided by Subsection (c), in addition to the fine prescribed for the specific offense, a person who has been finally convicted of an offense relating to the operating of a motor vehicle while intoxicated shall pay a fine of:

- (1) \$3,000 for the first conviction within a 36-month period;
- (2) \$4,500 for a second or subsequent conviction within a 36-month period; and
- (3) \$6,000 for a first or subsequent conviction if it is shown on the trial of the offense that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed.

(c) If the court having jurisdiction over an offense that is the basis for a fine imposed under this section makes a finding that the person is indigent, the court shall waive all fines and costs imposed on the person under this section.

further complained that the fine did not apply to him because he had not been finally convicted. The trial court overruled each of Garcia's objections.

For each of the reasons asserted in the trial court, Garcia asks this Court to conclude that the DWI traffic fine should be deleted from the judgment. The State has filed a brief in which it agrees with each of Garcia's points of error and prays that this Court modify the judgment by deleting the DWI traffic fine.

We modify the judgment—not the sentence—by deleting the \$6,000.00 DWI traffic fine. We affirm the judgment, as modified.³

Jeff Rambin
Justice

Date Submitted: July 17, 2023
Date Decided: July 18, 2023

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³Because both parties agree that the DWI traffic fine should be deleted from the judgment, we need not address the merits of their arguments. Even so, we observe that the record in this case reflects that Garcia is indigent. That issue was not raised in the trial court or in this Court.