



**IN THE
TENTH COURT OF APPEALS**

No. 10-17-00147-CR

FRANCISCO MARTINEZ SANCHEZ, JR.,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 272nd District Court
Brazos County, Texas
Trial Court No. 16-01118-CRF-272**

OPINION

In one issue, Appellant Francisco Martinez Sanchez, Jr. challenges the punishment assessed in connection with his conviction for three separate felony offenses: (1) burglary of a vehicle; and (2) two counts of theft of less than \$2,500. Sanchez additionally entered pleas of "true" to two enhancements. The trial court imposed a sentence of six years on each count, to be served concurrently.

Sanchez argues that \$133.00 of the costs assessed against him should be vacated because the statute under which they were imposed has been held unconstitutional by

the Texas Court of Criminal Appeals. See *Salinas v. State*, 523 S.W.3d 103 (Tex. Crim. App. 2017). Specifically, Sanchez challenges those portions of the costs that were assessed under §§ 133.102(e)(1) and (e)(6) of the Local Government Code that relate to “abused children’s counseling” and “comprehensive rehabilitation.” TEX. LOC. GOV. CODE ANN. §§ 133.102(e)(1) and (e)(6). The State concedes error, noting that these sections have been declared unconstitutional by *Salinas*. The State argues, however, that *Salinas* does not apply to Sanchez because the Court of Criminal Appeals directed that it have only limited retroactive effect.

The Court of Criminal Appeals held in *Salinas*:

[W]e will also apply our constitutional holding in this case to any defendant who has raised the appropriate claim in a petition for discretionary review before the date of this opinion, if that petition is still pending on the date of this opinion and if the claim would otherwise be properly before us on discretionary review. Otherwise, our holding will apply prospectively to trials that end after the date the mandate in the present case issues.

Salinas, 523 S.W.3d at 113. Mandate issued in *Salinas* on June 30, 2017. See *Salinas v. State*, No. PD-0170-16 (Tex. Crim. App. June 30, 2017) (mandate).

Sanchez’s sentences were imposed on April 13, 2017, and the judgments were signed by the presiding judge on April 26, 2017. The bill of costs that imposed the challenged \$133.00 fee was filed on April 28, 2017.

Because no petition for discretionary review is pending on Sanchez’s claim and the proceedings in the trial court ended prior to issuance of the mandate in *Salinas*, the court’s holding in that case does not apply. See also *Hawkins v. State*, 551 S.W.3d 764, 767 (Tex. App. – Fort Worth 2017, pet. ref’d); *Hernandez-Valdez v. State*, No. 12-17-00136-CR,

at *1 (Tex. App. – Tyler Mar. 15, 2018, no pet.) (mem. op., not designated for publication); *James v. State*, No. 05-16-01313-CR, 2017 WL 4944877, at *1 (Tex. App. – Dallas Nov. 1, 2017, no pet.) (mem. op., not designated for publication); *Love v. State*, No. 08-17-00030-CR, 2017 WL 4675614, at *2 (Tex. App. – El Paso Oct. 18, 2017, pet. ref'd) (mem. op., not designated for publication); *Garrett v. State*, No. 03-17-00030-CR, 2017 WL 3897270, at *2 (Tex. App. – Austin Aug. 25, 2017, no pet.) (mem. op., not designated for publication); *Austin v. State*, No. 06-16-00135-CR, 2017 WL 2265679, at *3 (Tex. App. – Texarkana May 24, 2017, pet. ref'd) (mem. op., not designated for publication).

Sanchez argues that we reject the holding in *Salinas* regarding retroactivity. However, as an intermediate court, we must follow the majority holding in that case. *Villarreal v. State*, 504 S.W.3d 494, 509 (Tex. App. – Corpus Christi 2016, pet. ref'd); *see also Gonzales v. State*, 190 S.W.3d 125, 130 n.1 (Tex. App. – Houston [1st Dist.] 2005, pet. ref'd).

We overrule Sanchez's sole issue and affirm the judgments of the trial court.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill
(Chief Justice Gray dissenting with opinion)

Affirmed
Opinion delivered and filed August 28, 2019
Publish
[CR25]

