



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1254-15

WILLIAM JOHNSON, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTEENTH COURT OF APPEALS
HARRIS COUNTY

Per curiam. NEWELL, J., filed a concurring opinion. YEARY, J., filed a dissenting opinion. HERVEY, J., not participating.

OPINION

Appellant was convicted of aggravated robbery with a deadly weapon and sentenced to eight years' imprisonment. On appeal, Appellant claimed that the comprehensive rehabilitation fee, assessed a part of the consolidated court costs, was unconstitutional. The court of appeals held that this claim was not preserved for review because Appellant did not object to the imposition of the fee before the trial court. The record reflects that the bill of

costs was not prepared until weeks after judgment was entered. Appellant did not have the opportunity to object to this fee when it was imposed. In the context of court-cost challenges, an appellant may not be faulted for failing to object when he or she was not given the opportunity to do so. *London v. State*, 490 S.W.3d 503, 507 (Tex. Crim. App. 2016). Appellant was entitled to challenge this mandatory court cost for the first time on appeal.

This Court recently determined that the comprehensive rehabilitation court cost is unconstitutional as a violation of the Separation of Powers Clause of the Texas Constitution. *Salinas v. State*, PDR No.-170-16, ___ S.W.3d ___ (Tex. Crim. App., March 8, 2017). Pursuant to *Salinas*, the \$133 consolidated court costs should be reduced pro rata by the percentage allocated to this impermissible account. The percentage attributable to the “comprehensive rehabilitation” account under the statute is 9.8218 percent. TEX. LOCAL GOV’T CODE §133.102(e)(6). That percentage of the \$133 fee assessed in appellant’s case is \$13.06. Subtracting this amount from the \$133 yields a fee of \$119.94. We reverse the judgment of the court of appeals with respect to the issue of court costs, and we modify the trial court's judgment to change the \$133 consolidated fee to \$119.94.

Delivered: October 4, 2017
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