



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

JUSTIN KEITH VEGA,	§	No. 08-16-00057-CR
Appellant,	§	Appeal from
v.	§	426th District Court
THE STATE OF TEXAS,	§	of Bell County, Texas
Appellee.	§	(TC # 74511)
	§	

O P I N I O N

Justin Keith Vega appeals his convictions of aggravated sexual assault of a child (Counts I-V), enhanced by a prior felony conviction. Appellant waived his right to a jury trial and entered a plea of not guilty before the trial court. The court found Appellant guilty, found the enhancement paragraph applicable to each count true, and assessed a life sentence on each count. We modify the judgments and affirm the judgments as modified.

SINGLE CRIMINAL ACTION -- COURT COSTS

In Issue One, Appellant argues that the trial court erred by ordering the payment of court costs in the judgment for each of the five counts because he was convicted of five offenses in a single criminal action. Appellant requests that we delete the court costs imposed in four of the judgments.

A grand jury returned a single indictment against Appellant containing five separate counts. Appellant entered a plea of not guilty before the trial court and the five cases were tried together. At the conclusion of the trial, the trial court entered a separate judgment for each count and assessed court costs in the amount of \$511 in each judgment, but the five judgments are supported by a single bill of costs imposing just one set of court costs. Appellant does not dispute that the trial court was required to include an order in the judgment for Appellant to pay court costs. *See* TEX.CODE CRIM.PROC.ANN. art. 42.16 (West 2006)(“If the punishment is any other than a fine, the judgment shall specify it, and order it enforced by the proper process. It shall also adjudge the costs against the defendant, and order the collection thereof as in other cases.”). Only statutorily authorized court costs may be assessed against a criminal defendant. *See Johnson v. State*, 423 S.W.3d 385, 389 (Tex.Crim.App. 2014), *citing* TEX.CODE CRIM.PROC.ANN. art. 103.002 (West 2007)(“An officer may not impose a cost for a service not performed or for a service for which a cost is not expressly provided by law.”). When an appellate court reviews a complaint that there is an insufficient basis for the court costs imposed in the judgment, it evaluates whether there is a statutory basis for the costs. *Johnson*, 423 S.W.3d at 395-96.

Article 102.073(a) provides: “In a single criminal action in which a defendant is convicted of two or more offenses or of multiple counts of the same offense, the court may assess each court cost or fee only once against the defendant. TEX.CODE CRIM.PROC.ANN. art. 102.073(a)(West Supp. 2016). The statute does not define “single criminal action,” but the Waco Court of Appeals construed the statute in a remarkably similar case and held that a “single criminal action” occurs when allegations and evidence of two or more offenses or multiple counts of the same offense are

presented in a single trial or plea proceeding. *See Hurlburt v. State*, 506 S.W.3d 199, 203-04 (Tex.App.--Waco 2016, no pet.).¹ We agree with *Hurlburt* and will follow it.

Appellant was tried and convicted of five counts of the same offense in a single non-jury trial. Consequently, the trial court was authorized to assess each court cost or fee only once. The trial court erred by assessing court costs of \$511 in each of the five judgments. Issue One is sustained.

INACCURACIES IN THE JUDGMENT

Appellant raises two other issues related to inaccuracies in the judgment which the State agrees must be corrected. An appellate court is authorized to reform or modify incorrect judgments when the necessary data and information are available. *See TEX.R.APP.P. 43.2(b); Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex.Crim.App. 1993). In Issue Two, Appellant asserts that each of the five judgments erroneously reflects the date of the offense as February 6, 2016 instead of February 6, 2015. The indictment alleges that the five offenses occurred on or about February 6, 2015, and the trial court found Appellant guilty of each offense. The State concedes that the judgment must be reformed to reflect the correct date of offense.

In Issue Three, Appellant contends that the judgments must be reformed to correctly reflect the statute for the offense. The indictments alleged that Appellant committed aggravated sexual assault of a child under Section 22.021(a)(1)(B) of the Texas Penal Code and the trial court found Appellant guilty of each offense. *See TEX.PENAL CODE ANN. § 22.021(a)(1)(B)(West Supp. 2016)*. The judgments, however, do not conform to the record. The State agrees that the judgments are incorrect and must be reformed. Issue Two is sustained.

¹ The appellant in *Hurlburt* was represented by the same appellate attorney as the appellant in this case.

Having sustained Issue One, we modify the judgments for Counts II, III, IV, and V to delete the assessed court costs. Having sustained Issue Two, we modify the judgments for Counts I, II, III, IV, and V to reflect that the date of offense is February 6, 2015. Having sustained Issue Three, we modify the judgments for Counts I, II, III, IV, and V to reflect that the statute for the offense is Section 22.021(a)(1)(B). The judgments, as so modified, are affirmed.

April 26, 2017

ANN CRAWFORD McCLURE, Chief Justice

Before McClure, C.J., Rodriguez, and Palafox, JJ.
Rodriguez, J., not participating

(Do Not Publish)