COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

ALEXZANDER QUINTON LOVE,	§	No. 08-17-00030-CR
Appellant,	§	Appeal from
v.	§	Criminal District No. 3
THE STATE OF TEXAS,	§	of Tarrant County, Texas
Appellee.	§	(TC # 1426498D)
	§	

O P I N I O N

In this appeal, Alexzander Love challenges two of the itemized court costs that the trial court taxed against him in the final judgment of conviction. We deny the relief he seeks.

FACTUAL SUMMARY

On September 16, 2016, Appellant entered an open plea of guilty for the second-degree felony offense of sexual assault of a child. *See* TEX.PENAL CODE ANN. § 22.011(a)(2)(A) (West Supp. 2016). On December 15, 2016, the trial court found Appellant guilty as charged and sentenced him to five years' incarceration. Relevant here, he was also assessed $133 in "consolidated court cost" and $100 for a "child abuse prevention" fee. This appeal challenges only those two fees (out of the total $689 in court costs). Appellant contends that the statutes

authorizing those fees are unconstitutional on their face because they violate the Separation of Powers Clause of the Texas Constitution.

CONTROLLING LAW

The Texas Constitution divides government into three distinct branches--the executive, the legislative, and the judiciary--and "no person . . . shall exercise any power properly attached" to another branch. TEX.CONST. art. II § 1. One way the Separation of Powers provision is violated is "when one branch of government assumes or is delegated a power 'more properly attached' to another branch." *Ex parte Lo*, 424 S.W.3d 10, 28 (Tex.Crim.App. 2014)(op. on State's motion for reh'g), *quoting Ex parte Gill,* 413 S.W.3d 425, 431-32 (Tex.Crim.App. 2013).

The power to tax generally rests with the legislative branch and the many political subdivisions of the State. *See e.g.* TEX.CONST. art. VIII, § 1(c),(d),(e),(g),(h) and (i); TEX.CONST. art. VIII, § 1-a; TEX. CONST. art. VIII, § 1-d-1. What then allows a court to "tax" court costs that go beyond the costs of administering the court? A cursory review of most court cost bills will reveal a variety of individual line items, all for designated purposes and authorized by various statutes. The Texas Court of Criminal Appeals has addressed this question and requires that in criminal cases all of the line item court costs must ultimately relate to the administration of the criminal justice system:

> We hold that, if the statute under which court costs are assessed (or an interconnected statute) provides for an allocation of such court costs to be expended for legitimate criminal justice purposes, then the statute allows for a constitutional application that will not render the courts tax gatherers in violation of the separation of powers clause. A criminal justice purpose is one that relates to the administration of our criminal justice system. Whether a criminal justice purpose is 'legitimate' is a question to be answered on a statute-by-statute/case-by-case basis.

Peraza v. State, 467 S.W.3d 508, 517-18 (Tex.Crim.App. 2015), *cert. denied*, 136 S.Ct. 1188 (2016)(footnotes omitted).

In this appeal, Appellant contends that two of the court costs taxed against him fail this test because they do not serve the administration of the criminal justice system. He thus urges that the authorizing statutes are unconstitutional on their face. As such, Appellant must show "that no set of circumstances exists under which that statute would be valid." *Id.* at 514-15. Further, any constitutional challenges begins with the presumption that the statute is valid and that the legislature did not act arbitrarily or unreasonably. *Id.* at 514; *State v. Rosseau*, 396 S.W.3d 550, 557 (Tex.Crim.App. 2013).

We emphasize one additional facet to our standard of review. The Fort Worth Court Appeals transferred this case to us pursuant to the Texas Supreme Court's docket equalization efforts. *See* TEX.GOV'T CODE ANN. § 73.001 (West 2013). By rule, "the court of appeals to which [a] case is transferred must decide the case in accordance with the precedent of the transferor court." TEX.R.APP.P. 41.3. As the transferee court, we are required to "stand in the shoes' of the transferor court so that an appellate transfer will not produce a different outcome, based on application of substantive law, than would have resulted had the case not been transferred." *In re Reardon*, 514 S.W.3d 919, 922-23 (Tex.App.--Fort Worth 2017, orig. proceeding), *quoting commentary* to TEX.R.APP.P. 41.3.

APPLICATION

In his first issue, Appellant challenges a $100 assessment for a "child abuse prevention fee." By statute, the fee is assessed against any person convicted of one of several specified offenses, including sexual assault of a child. *See* TEX.CODE CRIM.PROC.ANN. art. 102.0186(a) (West Supp. 2016). The proceeds must fund "child abuse prevention programs in the county where the court is located." *Id.* at art. 102.0186(c). The Fort Worth Court of Appeals has previously ruled that "[b]ecause the imposition of this cost is limited to those defendants found guilty of

crimes against children, the $100 imposed to be deposited in 'the county child abuse prevention fund' is related to the administration of the criminal justice system such that this cost is not facially unconstitutional. *Ingram v. State*, 503 S.W.3d 745, 749 (Tex.App.--Fort Worth 2016, pet. ref'd). Following that precedent, we overrule Appellant's first issue.

In his second issue, Appellant challenges a $133 "consolidated court cost" fee. At the time of his conviction, the state comptroller by statute allocated the proceeds from that fee in varying percentages to fourteen specified accounts. Act of June 17, 2011, 82nd Leg., R.S., ch. 1249, § 12, 2011 TEX.GEN.LAWS 3349, 3353 (formally codified at TEX.LOC.GOV'T CODE ANN. § 133.102(b)(1)(e)). Appellant contends that three of those designated accounts are not used for criminal justice related functions. Specifically, Appellant contends that the inclusion of allocations to (1) "abused children's counseling," (2) "law enforcement officers standards and education," and (3) "comprehensive rehabilitation" violates the Separation of Powers Clause, rendering the entire statute unconstitutional. After Appellant's brief was filed, the Texas Court of Criminal Appeals agreed with Appellant's argument with regard to the "abused children's counseling" and "comprehensive rehabilitation" accounts. *Salinas v. State*, PD-0170-16, 2017 WL 915525, at *7 (Tex.Crim.App. Mar. 8, 2017). For reasons detailed in that opinion, the proceeds earmarked for those two specific accounts were directed into either the State's general revenue fund, or to the Department of Human Services. While this holding seemingly helps Appellant, two other holdings from the case control our disposition of his issue.

First, the *Salinas* court held that the consolidated court cost statute was severable in the sense that if one of the allocated uses is improper, only the portion of the $133 fee allocated to that use should be deleted from the judgment of conviction. *Id.* at *1. This holding necessarily precludes the relief that Appellant sought in his original prayer to this Court--deleting the entire

$133 fee. More importantly, the Texas Court of Criminal Appeals also directed that its holding have limited retroactivity. *Id.* at *6. The court limited the holding to the actual party in *Salinas* and "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." *Id.* Otherwise, the *Salinas* holding applies prospectively to "trials that end after the date the mandate in the present case issues." *Id.* Accordingly, the Texas Court of Criminal Appeals has directed the lower courts not to modify a trial court's judgment by reducing the consolidated fees allocated to the accounts for "abused children's counseling" and "comprehensive rehabilitation." And while Appellant in a letter brief urges this Court to extend the *Salinas* holding to cases pending in an intermediate court of appeals, we are constrained by both the language of the *Salinas* opinion, and Fort Worth Court of Appeals decisions refusing that same invitation. *Horton v. State*, 02-16-00229-CR, 2017 WL 1953333, at *4 (Tex.App.--Fort Worth May 11, 2017, pet. ref'd); *Hawkins v. State*, No. 02-16-00104-CR, 2017 WL 1352097 (Tex.App.--Fort Worth Apr. 13, 2017, pet. filed).

We would reject Appellant's argument for another reason. The *Salinas* court noted that if the legislature amended the statute before the mandate in that case issued, "the only cases that will be affected by this opinion will be the few that are now pending in this Court and are appropriate for relief." *Id.* at *6 n.54. The legislature has indeed amended the statute and deleted the "abused children's counseling" and "comprehensive rehabilitation" provisions. *See* TEX.LOC.GOV'T CODE ANN. § 133.102(e)(West Supp. 2016)(amended by Act of Apr. 27, 2017, 85th Leg., R.S., ch. 966, § 1 (effective June 15, 2017)). That amendment went into effect on June 15, 2017, preceding the mandate in *Salinas*, which issued on June 30, 2017. *Id.*; *see also Hurtado v. State*, No. 02-16-

00436-CR, 2017 WL 3188434, at *1 (Tex.App.--Fort Worth July 27, 2017, no pet. h.)(mem. op., not designated for publication)(noting same).

Appellant also urges that the collection of court costs allocated to the "law enforcement officers standards and education" account is similarly unconstitutional. *Salinas* did not address this particular account, but the Fort Worth Court of Appeals has, and it rejected this identical argument. *Ingram*, 503 S.W.3d at 748; *see also Austin v. State*, 06-16-00135-CR, 2017 WL 2265679, at *2-4 (Tex.App.--Texarkana May 24, 2017, pet. filed)(following *Ingram* and rejecting similar claim). In this transfer case, we are bound by that holding and similarly overrule Appellant's claim regarding the "law enforcement officers standards and education" account.

We overrule Issue Two and affirm the judgment of the trial court.

October 18, 2017

ANN CRAWFORD McCLURE, Chief Justice

Before McClure, C.J., Rodriguez, and Palafox, JJ.

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