



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

GARY ZUNIGA, JR.,	§	No. 08-16-00333-CR
	§	
Appellant,	§	Appeal from
	§	
v.	§	207th District Court
	§	
THE STATE OF TEXAS,	§	of Hays County, Texas
	§	
Appellee.	§	(TC # CR-13-0328)
	§	

**MEMORANDUM OPINION**

Gary Zuniga, Jr. appeals his convictions of aggravated robbery (Count I) and evading arrest with a motor vehicle (Count III), enhanced by two prior felony convictions. After finding Appellant guilty of Counts I and III, a jury found the enhancements paragraphs true and assessed Appellant's punishment at a fine of \$10,000 and imprisonment for seventy years on Count I and a fine of \$10,000 and imprisonment for fifteen years on Count III. The State dismissed Count II. We modify the judgments to remove the order assessing attorney's fees as costs against Appellant, and affirm the judgments of conviction as so modified.

**FRIVOLOUS APPEAL**

Appellant's court-appointed counsel has filed a brief in which he has concluded that the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), by presenting a professional

evaluation of the record demonstrating why, in effect, there are no arguable grounds to be advanced. *See In re Schulman*, 252 S.W.3d 403, 407 n.9 (Tex.Crim.App. 2008)(“In Texas, an Anders brief need not specifically advance ‘arguable’ points of error if counsel finds none, but it must provide record references to the facts and procedural history and set out pertinent legal authorities.”); *High v. State*, 573 S.W.2d 807 (Tex.Crim.App. 1978). Counsel has notified the Court in writing that he has delivered a copy of counsel’s brief and the motion to withdraw to Appellant, and he has advised Appellant of his right to review the record, file a *pro se* brief, and to seek discretionary review. *Kelly v. State*, 436 S.W.3d 313, 318-20 (Tex.Crim.App. 2014)(setting forth duties of counsel). Appellant did not request access to the record or file a *pro se* brief.

Counsel’s brief demonstrates that there are no arguable grounds that would entitle Appellant to a reverse of his convictions, but he argues that the judgment must be modified because the trial court improperly ordered Appellant to pay attorney’s fees in the amount of \$12,630.25 as costs. Each judgment states “See Bill of Costs” regarding the assessment of costs. The bill of costs created by the Hays County District Clerk on November 21, 2016 does not include attorney’s fees in the total amount of costs, but it states that the amount of costs is subject to change, and it refers to the trial court’s order to pay attorney’s fees for the amount due. The Hays County District Clerk filed a supplemental clerk’s record containing orders to pay attorney’s fees in the total amount of \$14,449.45. Appellant’s counsel maintains in his brief that the District Clerk informed him by telephone on June 21, 2017 that the bill of costs included \$12,630.25 in court-appointed attorney’s fees, but the supplemental clerk’s record includes five orders to pay attorney’s fees in

the total amount of \$14,449.45. The record shows that Appellant was represented by appointed counsel at trial and on appeal, and he was provided with the appellate record at no cost. There is no evidence showing that Appellant's financial circumstances have changed. The State filed a letter brief conceding that the judgment must be modified to remove the assessment of attorney's fees as costs. We agree that the judgment must be modified to remove the order imposing attorney's fees in the amount of \$14,449.45 as costs. *See Mayer v. State*, 309 S.W.3d 552, 555-557 (Tex.Crim.App. 2010); *Dominguez v. State*, 363 S.W.3d 926, 934-35 (Tex.App.--Austin 2012, no pet.). Further, we conclude that it is appropriate for counsel to file an *Anders* brief even though he has raised the issue regarding the improper assessment of costs which resulted in modification of the judgments. *See Wiedenfeld v. State*, 450 S.W.3d 905, 906 (Tex.App.--San Antonio 2014, no pet.).

After carefully reviewing the record and counsel's brief, we conclude that the appeal is frivolous. We modify the judgments to delete the order assessing attorney's fees in the amount of \$14,449.45 as costs against Appellant and further delete the amount of attorney's fees assessed as costs in any order to withdraw funds from Appellant's TDCJ-ID inmate trust fund account. The judgments, as modified, are affirmed.

January 17, 2018

ANN CRAWFORD McCLURE, Chief Justice

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

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