

Opinion filed July 8, 2021



In The

# Eleventh Court of Appeals

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No. 11-18-00226-CR

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**MISTY RAE BAILEY, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 161st District Court  
Ector County, Texas  
Trial Court Cause No. B-17-0373-CR**

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## **MEMORANDUM OPINION ON REMAND**

The jury convicted Appellant, Misty Rae Bailey, of the offense of aggravated assault of a family member with a deadly weapon and assessed her punishment at confinement for two years and a fine of \$5,000. We modify the trial court's judgment to delete the Time Payment Fee assessed as a court cost and, as modified, affirm the trial court's judgment.

Appellant's court-appointed counsel has filed in this court a motion to withdraw. The motion is supported by a brief in which counsel professionally and conscientiously examines the record and applicable law and concludes that there are no arguable issues to present on appeal. Counsel provided Appellant with a copy of the brief, a copy of the motion to withdraw, and a copy of both the clerk's record and the reporter's record. Counsel advised Appellant of her right to review the record and file a response to counsel's brief. Counsel also advised Appellant of her right to file a petition for discretionary review. *See* TEX. R. APP. P. 68. Court-appointed counsel has complied with the requirements of *Anders v. California*, 386 U.S. 738 (1967); *Kelly v. State*, 436 S.W.3d 313 (Tex. Crim. App. 2014); *In re Schulman*, 252 S.W.3d 403 (Tex. Crim. App. 2008); and *Stafford v. State*, 813 S.W.2d 503 (Tex. Crim. App. 1991).

Appellant has not filed a response to counsel's *Anders* brief. In addressing an *Anders* brief, a court of appeals may only determine (1) that the appeal is wholly frivolous and issue an opinion explaining that it has reviewed the record and finds no reversible error or (2) that arguable grounds for appeal exist and remand the cause to the trial court so that new counsel may be appointed to brief the issues. *Schulman*, 252 S.W.3d at 409; *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). Following the procedures outlined in *Anders* and *Schulman*, we have independently reviewed the record, and we agree with counsel that no arguable grounds for appeal exist.<sup>1</sup>

We note, however, that the judgment contains a nonreversible error. In the judgment, the trial court ordered Appellant to pay court costs, including a Time Payment Fee of \$25. In light of the recent opinion of the Court of Criminal Appeals in *Dulin*, we conclude that the time payment fee must be struck in its entirety as

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<sup>1</sup>We note that Appellant has a right to file a petition for discretionary review pursuant to TEX. R. APP. P. 68.

prematurely assessed. *See Dulin v. State*, 620 S.W.3d 129, 133 & n.29 (Tex. Crim. App. 2021). When the trial court erroneously includes fees as court costs, we should modify the trial court’s judgment to remove the improperly assessed fees. *See Cates v. State*, 402 S.W.3d 250, 252 (Tex. Crim. App. 2013).

Accordingly, we modify the trial court’s judgment and the bill of cost to delete the time payment fee of \$25, without prejudice to a time payment fee being assessed later “if, more than 30 days after the issuance of the appellate mandate, [Appellant] has failed to completely pay any fine, court costs, or restitution that [s]he owes.” *See Dulin*, 620 S.W.3d at 133.

We grant counsel’s motion to withdraw; modify the judgment of the trial court as set forth above; and, as modified, affirm the judgment of the trial court.

PER CURIAM

July 8, 2021

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Bailey, C.J.,  
Trotter, J., and Williams, J.