

Affirmed and Opinion Filed November 1, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-01313-CR

**CHARLES RAY JAMES, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 1
Dallas County, Texas
Trial Court Cause No. F-1670480-H**

MEMORANDUM OPINION

Before Justices Bridges, Fillmore, and Stoddart
Opinion by Justice Stoddart

Charles Ray James appeals from a judgment adjudicating his guilt after he was placed on deferred adjudication community supervision for the offense of theft. In a single issue, he claims a portion of the court costs assessed against him are unconstitutional under the holding in *Salinas v. State*, 523 S.W.3d 103, 109–10 (Tex. Crim. App. 2017). We conclude *Salinas* does not apply to appellant’s case because he was tried before the mandate issued in *Salinas* and his case was not pending on discretionary review at the time the opinion issued. *See id.* at 112–13. We affirm.

Appellant pleaded guilty to the offense of theft of property valued at less than \$2,500 with two prior theft convictions. He was placed on deferred adjudication for three years. The State later moved to adjudicate his guilt for violating the terms of his community supervision.

Appellant pleaded true to the allegations. The trial court adjudicated him guilty and sentenced him to six years' confinement. The judgment assessed court costs of \$299 of which \$133 is the consolidated court cost authorized by local government code section 133.102. TEX. LOC. GOV'T CODE ANN. § 133.102.

Under section 133.102, persons convicted of a felony must pay a consolidated cost of \$133 in addition to all other costs. *Id.* 133.102(a)(1). This consolidated cost is then allocated by the comptroller to several different accounts in the percentages identified in the statute. *Id.* § 133.102(e). The version of section 133.102(e) in effect at the time of the judgment in this case required allocation of the court cost to fourteen different accounts, including accounts for “abused children’s counseling” and “comprehensive rehabilitation.”¹ In *Salinas*, the court of criminal appeals held that the statute’s allocation to these two accounts violated the separation of powers clause of the Texas Constitution because the accounts were not related to a legitimate criminal justice purpose. *Salinas*, 523 S.W.3d at 109–10. The court modified the judgment in that case to reduce the consolidated cost by the amount allocated to the two invalid accounts. *Id.* at 111. However, the court limited the retroactive application of its holding to only those cases where the issue was raised and properly before the court in a petition for discretionary review pending on the date of the opinion. *Id.* at 113. “Otherwise, our holding will apply prospectively to trials that end after the date the mandate in the present case issues.” *Id.*² The mandate in *Salinas* issued on June 30, 2017.

Appellant was adjudicated guilty on November 3, 2016, well before the mandate issued in *Salinas*. Further, appellant’s case does not fall within the limited retroactivity of *Salinas*.

¹ Act of May 29, 2011, 82nd Leg., R.S., ch. 1249, § 13(b), sec. 113.102(e)(1), (6), 2011 Tex. Gen. Laws 3349, 3353, *repealed by* Act of April 27, 2017, 85th Leg., R.S., ch. 966, § 1 (effective June 15, 2017) (current version at TEX. LOC. GOV'T CODE ANN. § 133.102(e)).

² In response to *Salinas*, the legislature amended section 133.102(e) to delete the two accounts and reallocate the percentages.

This case was pending before us on direct appeal when the court of criminal appeals issued *Salinas*. Appellant filed his brief in this Court on June 7, 2017. He did not have a petition for discretionary review raising the issue pending in the court of criminal appeals at the time the *Salinas* opinion issued. Therefore, the holding in *Salinas* does not apply to this appeal. See *Salinas*, 523 S.W.3d at 113; *Garrett v. State*, No. 03-17-00029-CR, 2017 WL 3897267, at *2 (Tex. App.—Austin Aug. 25, 2017, no pet. h.) (mem. op., not designated for publication).

We overrule appellant's sole issue and affirm the trial court's judgment.

/Craig Stoddart/
CRAIG STODDART
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

CHARLES RAY JAMES, Appellant

No. 05-16-01313-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court

No. 1, Dallas County, Texas

Trial Court Cause No. F-1670480-H.

Opinion delivered by Justice Stoddart.

Justices Bridges and Fillmore participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 1st day of November, 2017.