

Affirmed as Modified in part; Affirmed in part and Opinion Filed January 3, 2018



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

No. 05-16-01409-CR

No. 05-17-00222-CR

TYREN PHILLIPS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the Criminal District Court No. 1
Dallas County, Texas
Trial Court Cause Nos. F-1651970-H, F-1600624-H**

MEMORANDUM OPINION

Before Justices Francis, Stoddart, and Whitehill
Opinion by Justice Francis

Tyren Phillips brings this appeal seeking reformation of two judgments of conviction: one for aggravated robbery and one for evading arrest. Appellant was convicted of both offenses in a single criminal action. In his first issue, appellant requests one of the judgments be reformed to delete duplicate court costs. In his second issue, appellant asserts the judgments must be reformed to delete costs assessed against him unconstitutionally.

Article 102.073 of the Texas Code of Criminal Procedure states “[i]n a single criminal action in which a defendant is convicted of two or more offenses . . . 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. 2017). The article further states that “each court cost or fee the amount of which is determined according to the category of offense must be assessed using the highest category

of offense that is possible based on the defendant's convictions." *Id.* Art. 102.073(b). Here, the trial court assessed court costs of \$269 in both the judgment for the aggravated robbery offense and the judgment for the evading arrest offense even though the offenses were prosecuted in the same criminal action. The State concedes the bill of costs certification for each case reflects identical assessed costs. Appellant should have been assessed costs only in the aggravated robbery case which, as a first-degree felony, was the higher category offense. *Id.* We therefore modify the judgment for appellant's evading arrest conviction to delete the award of costs. *See Robinson v. State*, 514 S.W.3d 816, 828 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd).

Appellant next contends a portion of the costs assessed against him must be deleted as constitutionally impermissible. Specifically, appellant requests the deletion of consolidated court costs statutorily allocated to the comprehensive rehabilitation and abused children's counseling accounts because such assessed costs were declared facially unconstitutional by the Texas Court of Criminal Appeals in *Salinas v. State*, 523 S.W.3d 103, 113 (Tex. Crim. App. 2017). After the *Salinas* opinion issued, the legislature amended the fees statute to remove the unconstitutional allocation. *See* TEX. LOC. GOV'T CODE ANN. § 133.102(e) (amended by Act of Apr. 27, 2017, 85th Leg. R.S., ch. 966 §1 (effective June 15, 2017)). The court in *Salinas* explicitly limited the retroactive application of its decision, however, to cases in which a petition for review raising the issue of unconstitutional fees was pending before the decision issued. *Salinas*, 523 S.W.3d at 113. Prospective application was limited to cases in which the trial ended after the date the mandate in *Salinas* issued. *Id.* Because appellant's cases do not fit into either category outlined in *Salinas*, appellant is not entitled to the relief he requests.

Based on the foregoing, we modify the trial court's judgment in trial court cause number F-1600624-H to delete the award of costs and affirm the judgment as modified. *See* TEX. R. APP. P. 43.2(b). We affirm the trial court's judgment in trial court cause number F-1651970-H.

/Molly Francis/
MOLLY FRANCIS
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

TYREN PHILLIPS, Appellant

No. 05-16-01409-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 1, Dallas County, Texas
Trial Court Cause No. F-1651970-H.
Opinion delivered by Justice Francis.
Justices Stoddart and Whitehill
participating.

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

Judgment entered January 3, 2018.



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

JUDGMENT

TYREN PHILLIPS, Appellant

No. 05-17-00222-CR V.

THE STATE OF TEXAS, Appellee

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Trial Court Cause No. F-1600624-H.
Opinion delivered by Justice Francis.
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participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows: The assessed court costs of \$269 are **DELETED**. As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered January 3, 2018.