

Affirmed as modified; Opinion Filed May 22, 2018.



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

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No. 05-17-00758-CR

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**MARK ANTHONY LEWIS, Appellant**  
**V.**  
**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 194th Judicial District Court**  
**Dallas County, Texas**  
**Trial Court Cause No. F-1751348-M**

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**MEMORANDUM OPINION**

Before Justices Lang, Myers, and Stoddart  
Opinion by Justice Lang

Appellant Mark Anthony Lewis waived a jury and pleaded guilty to aggravated robbery. The trial court assessed punishment at nine years' imprisonment. In his sole issue on appeal, appellant contends the trial court's judgment should be modified to show there was no plea agreement. Further, the State asserts a cross-issue requesting modification of the judgment to reflect the correct amount of court costs.

We decide the parties' respective issues in their favor. We modify the trial court's judgment and affirm as modified.

**I. FACTUAL AND PROCEDURAL CONTEXT**

Prior to appellant entering his guilty plea, the State offered appellant a plea bargain in which punishment would be set at seven years' imprisonment in exchange for a plea of guilty.

During his plea hearing, appellant rejected that plea bargain and stated he wished to proceed with an “open plea.” Appellant signed a form document titled “Plea Agreement” in which a section titled “Agreed sentence” was manually crossed out and replaced with the handwritten term “Open.” Also, that document contained a section titled “Type of Plea” in which the selection “Open plea” was manually checked.

After assessing punishment as described above, the trial court signed a judgment that (1) states in part “Terms of Plea Bargain: 9 YEARS PENITENTIARY: NO FINE” and (2) includes an order that appellant pay \$234 in court costs. Appellant timely filed this appeal. Approximately two months later, the Dallas County District Clerk generated a “Bill of Costs Certification” showing total court costs of \$259. That amount consists of the \$234 described in the judgment, plus a \$25 “time payment fee” because the \$234 was not paid within thirty days of the date of the judgment. *See* TEX. LOCAL GOV’T CODE ANN. § 133.103 (West Supp. 2017).

## **II. THE PARTIES’ ISSUES**

### ***A. Standard of Review and Applicable Law***

This Court “has the power to correct and reform the judgment of the court below to make the record speak the truth when it has the necessary data and information to do so.” *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref’d); *accord Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Abron v. State*, 997 S.W.2d 281, 282 (Tex. App.—Dallas 1998, pet. ref’d); *see also* TEX. R. APP. P. 43.2(b) (court of appeals may “modify the trial court’s judgment and affirm it as modified”).

A judgment shall “adjudge the costs against the defendant, and order the collection thereof.” *See* TEX. CODE CRIM. PROC. ANN. art. 42.16 (West 2006); *Coronel v. State*, 416 S.W.3d 550, 556 (Tex. App.—Dallas 2013, pet. ref’d). “[C]ourt costs are mandated by statute; they are not discretionary and, therefore, are not subject to approval or authorization by the trial court.”

*Coronel*, 416 S.W.3d at 556. Further, “[t]he costs listed in the bill of costs are not newly created; only the compilation of those costs is new.” *Id.*

### ***B. Application of Law to Facts***

#### **1. Terms of Plea Bargain**

In his issue on appeal, appellant contends the trial court’s judgment “should be reformed to accurately reflect that there was no plea agreement” because he “rejected the State’s offer of seven years’ imprisonment and entered an open plea of guilty.” The State (1) asserts “the judgment does incorrectly reflect the terms of the written plea agreement submitted into the record and addressed during Appellant’s oral plea” and (2) “respectfully submits that the words ‘9 YEARS PENITENTIARY: NO FINE’ be stricken from the judgment and/or be replaced with the word ‘NONE’ to accurately reflect the written and oral record.”

Although the judgment shows the terms of a plea bargain as “9 YEARS PENITENTIARY: NO FINE,” the record shows appellant entered an open guilty plea. Therefore, we modify the trial court’s judgment to replace the phrase “9 YEARS PENITENTIARY: NO FINE” with “None.” *See Bigley*, 865 S.W.2d at 27–28; *Abron*, 997 S.W.2d at 282; *Asberry*, 813 S.W.2d at 529; *see also Scates v. State*, No. 05-10-00758-CR, 2011 WL 3211361, at \*1 (Tex. App.—Dallas July 29, 2011, no pet.) (mem. op., not designated for publication) (modifying judgment to replace terms of plea bargain with “None” where appellant entered open plea).

Appellant’s issue is decided in his favor.

#### **2. Amount of Court Costs**

In its cross-issue, the State asserts the judgment “should be amended to reflect the correct amount for total court costs,” i.e., \$259. In an opinion issued after the parties’ appellate briefs were filed, this Court modified a trial court’s judgment in virtually identical circumstances. *See Robledo v. State*, No. 05-17-00064-CV, 2018 WL 1391377, at \*4 (Tex. App.—Dallas Mar. 20, 2018, no

pet.) (mem. op., not designated for publication). Accordingly, we “modify the trial court’s judgment to reflect the correct amount of costs,” which the record shows is \$259. *See id.*

We decide the State’s cross-issue in its favor.

### **III. CONCLUSION**

We decide in favor of appellant on his issue and in favor of the State on its cross-issue. We modify the trial court’s judgment to replace the phrase “9 YEARS PENITENTIARY: NO FINE” with “None” and state the amount of court costs as \$259. As modified, the trial court’s judgment is affirmed.

/Douglas S. Lang/  
DOUGLAS S. LANG  
JUSTICE

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TEX. R. APP. P. 47.2(b)  
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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

MARK ANTHONY LEWIS, Appellant

No. 05-17-00758-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 194th Judicial District  
Court, Dallas County, Texas

Trial Court Cause No. F-1751348-M.

Opinion delivered by Justice Lang, Justices  
Myers and Stoddart participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** to replace the phrase "9 YEARS PENITENTIARY: NO FINE" with "None" and state the amount of court costs as \$259.

As **MODIFIED**, the judgment is **AFFIRMED**.

Judgment entered this 22nd day of May, 2018.