

MODIFY and AFFIRM; and Opinion Filed March 5, 2018.



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

No. 05-17-00820-CR

SAVON JAMAL RAY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 213th District Court
Tarrant County, Texas
Trial Court Cause No. 1391309W**

MEMORANDUM OPINION

Before Justices Lang, Fillmore, and Schenck
Opinion by Justice Schenck

Savon Jamal Ray waived a jury trial and pleaded guilty to compelling prostitution of a person under eighteen years. The trial court deferred adjudicating guilt, placed appellant on seven years' community supervision, and assessed a \$700 fine. The State later filed motions to proceed with adjudication, alleging several violations of community supervision. In a hearing on the State's second amended motion to adjudicate, appellant pleaded not true to two of the allegations and pleaded true to four of the allegations. The trial court found all six allegations true, adjudicated appellant guilty of compelling prostitution of a person under eighteen years, and sentenced him to thirty years' imprisonment. Although originally filed in the Second Court of Appeals, the appeal was transferred to this Court on July 14, 2017 by the Texas Supreme Court pursuant to a docket equalization order. TEX. GOV. CODE ANN. § 73.001 (West 2013).

On appeal, appellant's attorney filed a brief in which he concludes the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967). The brief presents a professional evaluation of the record showing why, in effect, there are no arguable grounds to advance. See *High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. [Panel Op.] 1978) (determining whether brief meets requirements of *Anders*). Counsel delivered a copy of the brief to appellant. We advised appellant of his right to file a pro se response, but he did not file a pro se response. See *Kelly v. State*, 436 S.W.3d 313, 319–21 (Tex. Crim. App. 2014) (noting appellant has right to file pro se response to *Anders* brief filed by counsel).

We have reviewed the record and counsel's brief. See *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005) (explaining appellate court's duty in *Anders* cases). We agree the appeal is frivolous and without merit. We find nothing in the record that might arguably support the appeal.

Although not an arguable issue, we note the trial court's judgment adjudicating guilt incorrectly contains a \$300 fine that was not orally pronounced. When an accused receives deferred adjudication community supervision, no sentence is imposed. *Taylor v. State*, 131 S.W.3d 497, 502 (Tex. Crim. App. 2004); *Alexander v. State*, 301 S.W.3d 361, 363 (Tex. App.–Fort Worth 2009, no pet.). Then, when guilt is adjudicated, the order adjudicating guilt sets aside the order deferring adjudication, including any previously imposed fine. *Taylor*, 131 S.W.3d at 501–02 (noting that deferred adjudication differs in this regard from regular probation, where a fine orally pronounced at sentencing survives revocation of probation). When a variation exists between the oral pronouncement of the sentence and the written memorialization of the sentence, the oral pronouncement controls. *Id.* at 500; *Coffey v. State*, 979 S.W.2d 326, 328 (Tex. Crim. App. 1998).

Here, although the trial court included a fine in the order of deferred adjudication, the subsequent judgment adjudicating appellant's guilt set aside that order. And the trial court did not orally pronounce a fine when appellant was sentenced following adjudication of guilt. Because the trial court did not include a fine in its oral pronouncement when appellant was adjudicated guilty, we must modify the judgment to delete the fine. *See Bray v. State*, 179 S.W.3d 725, 726 (Tex. App.—Fort Worth 2005, no pet.) (en banc) (holding that an appellate court has the authority to reform a judgment in an *Anders* appeal and to affirm that judgment as reformed). . Accordingly, we modify the judgment adjudicating guilt to delete the \$300 fine. TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993) (courts of appeals have authority to modify a judgment); *Bray*, 179 S.W.3d at 726 (courts of appeal have authority to modify judgment to delete fine in *Anders* case).

As modified, we affirm the trial court's judgment adjudicating guilt.

/David J. Schenck/

DAVID J. SCHENCK
JUSTICE

Do Not Publish
TEX. R. APP. P. 47

170820F.U05



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

JUDGMENT

SAVON JAMAL RAY, Appellant

No. 05-17-00820-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 213th District Court,
Tarrant County, Texas

Trial Court Cause No. 1391309W.

Opinion delivered by Justice Schenck.

Justices Lang and Fillmore participating.

Based on the Court's opinion of this date, the judgment adjudicating guilt of the trial court is **MODIFIED** as follows:

The section entitled "Fine" is modified to show "None."

As modified, we **AFFIRM** the trial court's judgment adjudicating guilt.

Judgment entered this 5th day of March, 2018.