

**AFFIRMED AS MODIFIED and Opinion Filed September 25, 2018**



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

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**No. 05-18-00449-CR**

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**LORENA MONSERRATH GANDARA, Appellant  
V.  
THE STATE OF TEXAS, Appellee**

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**On Appeal from the 15th Judicial District Court  
Grayson County, Texas  
Trial Court Cause No. 068742**

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**MEMORANDUM OPINION**

Before Chief Justice Wright and Justices Myers and Stoddart  
Opinion by Chief Justice Wright

Lorena Monserrath Gandara appeals her convictions for driving while intoxicated with a child passenger and aggravated assault with a deadly weapon. On August 28, 2018, the trial court filed findings and recommendations in which it found that appellant does not intend to proceed with her appeal.

By order entered September 5, 2018, the Court adopted the trial court's finding that appellant did not intend to proceed with the appeal. The Court's order also informed appellant that if a motion to dismiss was not filed within ten days, the Court would order the appeal submitted without a reporter's record or briefs. No motion to dismiss has been filed.

We submit the case without the reporter’s record and briefs. *See* TEX. R. APP. P. 37.3(c), 38.8(b)(4). Absent briefs, no issues are before us. We have reviewed the clerk’s record for fundamental error and have found none.

We note that the judgment in this case reflects the statute for offense for the aggravated assault count, labeled as “CT3,” as “CT3-22.02(2)(B).” The correct penal code provision for the offense of aggravated assault with a deadly weapon is section 22.02(a)(2). *See* TEX. PENAL CODE ANN. § 22.02(a)(2) (West 2011). The Court has the power to modify incorrect judgments when the necessary data and information is available to do so. *See* TEX. R. APP. P. 43.2(b); *Abron v. State*, 997 S.W.2d 281, 282 (Tex. App.—Dallas 1998, pet. ref’d). We modify the judgment to reflect the statute for offense as “CT3-22.02(a)(2).”

We affirm the trial court’s judgment as modified.

/Carolyn Wright/  
CAROLYN WRIGHT  
CHIEF 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Do Not Publish  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**

LORENA MONSERRATH GANDARA,  
Appellant

No. 05-18-00449-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 15th Judicial District  
Court, Grayson County, Texas  
Trial Court Cause No. 068742.

Opinion delivered by Chief Justice Wright.  
Justices Myers and Stoddart participating.

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

We modify the judgment to replace "CT3-22.02(B)" with "CT3-22.02(a)(2)" in the section styled "Statute for Offense."

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

Judgment entered September 25, 2018.