

Opinion issued October 28, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00033-CR

LELAND KREMPLEWSKI, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 264th District Court
Bell County, Texas*
Trial Court Case No. 78928**

* Per the Texas Supreme Court's docket-equalization powers, this appeal was transferred from the Third Court of Appeals to this court on January 11, 2019. *See* TEX. GOV'T CODE § 73.001; Order Regarding Transfer of Cases From Courts of Appeals, Misc. Docket No. 18-9166 (Tex. Dec. 20, 2018). We are unaware of any conflict between its precedent and ours. *See* TEX. R. APP. P. 41.3.

MEMORANDUM OPINION

On remand from the Court of Criminal Appeals, we modify the trial court's judgment to strike in its entirety the \$25 time-payment fee imposed on Leland Krempleski, and we affirm the judgment of conviction as modified.

BACKGROUND

This is the second time this appeal is before us. On the first occasion, Krempleski contended that 90 percent of the \$25 time-payment fee imposed on him as court costs was unconstitutional because it violated the separation-of-powers clause of the Texas Constitution. We agreed with Krempleski. Thus, we modified the trial court's judgment to reduce the time-payment fee to \$2.50 and affirmed the judgment as modified. *See Krempleski v. State*, No. 01-19-00033-CR, 2019 WL 3720627 (Tex. App.—Houston [1st Dist.] Aug. 8, 2019). The Court of Criminal Appeals later granted review on its own motion, vacated our court's judgment, and remanded the case for further proceedings consistent with the Court's decision in *Dulin v. State*, 620 S.W.3d 129 (Tex. Crim. App. 2021). *See Krempleski v. State*, No. PD-0848-19, 2021 WL 1940635 (Tex. Crim App. May 12, 2021) (per curiam).

DISCUSSION

In *Dulin*, the Court held that a time-payment fee assessed in a judgment must be struck in its entirety because the assessment is premature. 620 S.W.3d at 129. The Court reasoned that an appeal suspends a defendant's duty to pay court costs. *Id.*

Thus, so long as the defendant has an appeal pending, court costs imposed on him cannot be due, let alone overdue, and the defendant cannot owe a time-payment fee, which is imposed for the untimely payment of court costs. *Id.* at 129, 133. Accordingly, when a time-payment fee is assessed in the judgment, we must strike the fee in its entirety from the judgment. *Id.* at 133; *see also Dulin v. State*, Nos. 03-18-00523–24-CR, 2021 WL 3233854, at *2–3 (Tex. App.—Austin July 30, 2021, no pet.) (mem. op., not designated for publication) (modifying trial court judgments by striking time-payment fees in entirety and affirming judgments as modified).

Dulin is dispositive. We therefore must strike the time-payment fee entirely.

CONCLUSION

We modify the trial court’s judgment to strike in its entirety the \$25 time-payment fee. We affirm the trial court’s judgment as modified.

Gordon Goodman
Justice

Panel consists of Justices Kelly, Goodman, and Farris.

Do Not Publish. TEX. R. APP. P. 47.2(b).