Opinion issued August 23, 2022

In The

Court of Appeals

For The

First District of Texas

NOS. 01-22-00015-CR & 01-22-00016-CR

EARL LEDET, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause Nos. 1658064 & 1658065

MEMORANDUM OPINION

Appellant, Earl Ledet, pleaded guilty to two separate offenses of aggravated assault with a deadly weapon.[1] In each case, after a pre-sentence investigation and

[1] *See* TEX. PENAL CODE § 22.02. Trial court cause number 1658064 is appellate cause number 01-22-00015-CR. Trial court cause number 1658065 is appellate cause number 01-22-00016-CR. In cause number 01-22-00015-CR, appellant pleaded guilty with an agreed punishment recommendation from the State. In cause number

hearing, the trial court assessed appellant's punishment at confinement for twelve years, with the sentences to run concurrently, and entered an affirmative finding that appellant used or exhibited a deadly weapon, namely, a firearm, during the commission of each offense. Appellant timely filed a notice of appeal in each case.

Appellant's appointed counsel on appeal has moved to withdraw and filed a brief, stating that, in each case, the record presents no reversible error and that the appeal lacks merit and is frivolous. *See Anders v. California*, 386 U.S. 738 (1967). Counsel's brief meets the *Anders* requirements by presenting a professional evaluation of each record and supplying references to the record and legal authority. *See id.* at 744; *see also High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978). Counsel states that he has thoroughly reviewed each record and is unable to advance any ground of error warranting reversal. *See Anders*, 386 U.S. at 744; *Mitchell v. State*, 193 S.W.3d 153, 155 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

Appellant's counsel has certified that he mailed a copy of the motion to withdraw and the *Anders* brief to appellant and informed him of his right to access the record and file a response. *See In re Schulman*, 252 S.W.3d 403, 408 (Tex. Crim. App. 2008). Counsel also certified that he provided appellant with a form motion

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01-22-00016-CR, appellant pleaded guilty in exchange for the State waiving its right to a jury trial. The cases were tried contemporaneously. The trial court granted appellant permission to appeal.

for pro se access to the records for his response. *See Kelly v. State*, 436 S.W.3d 313, 322 (Tex. Crim. App. 2014). Appellant did not file a response to the *Anders* brief.

We have independently reviewed the entire record in each appeal, and we conclude that no reversible error exists in the record, that there are no arguable grounds for review, and that therefore the appeal is frivolous. *See Anders*, 386 U.S. at 744 (emphasizing that reviewing court—and not counsel—determines, after full examination of proceedings, whether appeal is wholly frivolous); *Garner v. State*, 300 S.W.3d 763, 767 (Tex. Crim. App. 2009) (reviewing court must determine whether arguable grounds for review exist); *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005) (same); *Mitchell*, 193 S.W.3d at 155 (reviewing court determines whether arguable grounds exist by reviewing entire record). We note that an appellant may challenge a holding that there are no arguable grounds for appeal by filing a petition for discretionary review in the Texas Court of Criminal Appeals. *See Bledsoe*, 178 S.W.3d at 827 & n.6.

Although not an arguable ground for reversal, counsel notes in his brief that the court costs and fees assessed in these cases do not comport with the governing statutory authority.

We have the authority to modify a judgment when we have the necessary information before us to do so. *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993). Further, this Court has the "authority to

reform a judgment in an *Anders* appeal and to affirm that judgment as reformed." *Hubbard v. State*, No. 02-13-00300-CR, 2014 WL 1767475, at *1 (Tex. App.—Fort Worth May 1, 2014, no pet.) (mem. op., not designated for publication); *see also Rodriguez v. State*, No. 01-13-00728-CR, 2014 WL 3697890, at *2 (Tex. App.—Houston [1st Dist.] July 24, 2014, no pet.) (mem. op., not designated for publication). "Only statutorily authorized court costs may be assessed against a criminal defendant." *Johnson v. State*, 423 S.W.3d 385, 389–90 (Tex. Crim. App. 2014). Thus, we may modify the bill of costs to reflect the appropriate statutory costs and delete improper charges. *See id*. ("[W]e review the assessment of court costs on appeal to determine if there is a basis for the cost."); *Pacas v. State*, 612 S.W.3d 588, 596–97 (Tex. App.—Houston [1st Dist.] 2020, pet. ref'd); *Segura v. State*, No. 02-21-00052-CR, 2022 WL 2840143, at *2 (Tex. App.—Fort Worth July 21, 2022, no pet. h.) (mem. op., not designated for publication).

In its judgment in cause number 1658064, the trial court assessed $290 in court costs and $60 in fees. In its judgment in cause number 1658065, the trial court assessed the same $290 in court costs, but "$75" in fees. However, the bill of costs in each case, which are identical, reflect the following costs and fees:

Consolidated Court Cost – State	$185.00
Consolidated Court Cost – Local	$105.00
LEA – Capias Execution	$ 50.00
LEA – Commitment Fee	$ 5.00
LEA – Release Fee	$ 5.00

When a defendant is convicted of two or more offenses in a "single criminal action," the trial court "may assess each court cost or fee only once against the defendant." TEX. CODE CRIM. PROC. art. 102.073(a); *see Pacas*, 612 S.W.3d at 597. If a trial court erroneously assesses costs for multiple convictions tried in a single proceeding, we retain the costs for the offense of the highest category. *Walton v. State*, 641 S.W.3d 861, 872–73 & n.2 (Tex. App.—Fort Worth 2022, pet. ref'd) (noting that, although "single criminal action" is not statutorily defined, courts have construed it to mean "allegations and evidence of more than one offense" presented in "single trial or plea proceeding"); *see, e.g.*, *Valdez v. State*, No. 03-16-00811-CR, 2017 WL 4478233, at *4, 6 (Tex. App.—Austin Oct. 6, 2017, no pet.) (mem. op., not designated for publication) (retaining costs assessed for second-degree felony, but deleting costs assessed for third-degree felony).

Here, because both offenses were tried in a single proceeding, the trial court erred in assessing the same costs and fees against appellant for both offenses. *See Walton*, 641 S.W.3d at 873; *Pacas*, 612 S.W.3d at 597; *Robinson v. State*, 514 S.W.3d 816, 827–28 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd). We note that the offenses are of the same category. *See Walton*, 641 S.W.3d at 872–73. We modify the judgment in trial court cause number 1658065 to delete the costs and fees. *See Robinson*, 514 S.W.3d at 828; *see also Cates v. State*, 402 S.W.3d 250,

252 (Tex. Crim. App. 2013) (holding that proper remedy is to reform judgment to delete improper fees).

Further, with respect to the costs assessed in the judgment in trial court cause number 1658064, appellant was subject to the statutes in effect at the time the offense was committed, i.e., December 23, 2019. For offenses committed prior to January 1, 2020, the statutory amount of the "Consolidated Court Cost – State" was $133.00, not $185.00. *See* Act of June 2, 2003, 78th Leg., R.S., ch. 209, § 62, 2003 Tex. Gen. Laws 979, 996–97, *amended by* Act of May 23, 2019, 86th Leg., R.S., ch. 1352, §§ 1.03, 5.01, 2019 Tex. Gen. Laws 3981, 3981–82, 4035; *see also* TEX. LOC. GOV'T CODE § 133.102. In addition, the statutory $105 fee for "Consolidated Court Cost – Local" was added by amendment in 2019 and applies only to offenses committed on or after January 1, 2020. *See* TEX. LOC. GOV'T CODE § 134.101; *see also* Act of May 23, 2019, 86th Leg., R.S., ch. 1352, §§ 1.04, 5.01, 2019 Tex. Gen. Laws 3981, 3981–82, 4035. Because the offenses in this case were committed prior to the effective date of the amendments, we modify the judgment in trial court cause number 1658064 to reduce the amount of the "Consolidated Court Cost – State" from $185.00 to $133.00 and to delete the $105 fee for "Consolidated Court Cost – Local."

As modified, we affirm the trial court's judgment in each case and grant counsel's motion to withdraw.[2] Attorney Allen C. Isbell must immediately send appellant the required notice and file a copy of the notice with the Clerk of this Court. *See* TEX. R. APP. P. 6.5(c).

PER CURIAM

Panel consists of Chief Justice Radack and Justices Landau and Hightower.

Do not publish. TEX. R. APP. P. 47.2(b).

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[2] *See* TEX. R. APP. P. 43.2(b) ("The court of appeals may . . . modify the trial court's judgment and affirm it as modified."). Appointed counsel still has a duty to inform appellant of the result of this appeal and that he may, on his own, pursue discretionary review in the Texas Court of Criminal Appeals. *See Ex Parte Wilson*, 956 S.W.2d 25, 27 (Tex. Crim. App. 1997).