

Affirmed and Memorandum Opinion filed February 18, 2016.



In The

Fourteenth Court of Appeals

NO. 14-15-00575-CR

STEVEN RAY HUNTER, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 149th District Court
Brazoria County, Texas
Trial Court Cause No. 73640**

M E M O R A N D U M O P I N I O N

Appellant appeals his conviction for theft. Appellant's appointed counsel filed a brief in which he concludes the appeal is wholly frivolous and without merit. However, appointed counsel seeks reformation of the judgment on certain costs and fees assessed against Appellant. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967), by presenting a professional evaluation of the record and demonstrating why there are no arguable grounds to be advanced

to reverse appellant's conviction. *See High v. State*, 573 S.W.2d 807, 811–13 (Tex. Crim. App. 1978).

A copy of counsel's brief was delivered to appellant. Appellant was advised of the right to examine the appellate record and file a pro se response. *See Stafford v. State*, 813 S.W.2d 503, 512 (Tex. Crim. App. 1991). As of this date, more than 60 days have passed and no pro se response has been filed.

We agree with appellant that the judgment contains two errors in that the trial court assessed attorneys' fees and jury fees against appellant. A judgment of conviction must order a defendant to pay court costs. Tex. Code Crim. Proc. Ann. art. 42.16 (West 2006) ("If the punishment is any other than a fine, the judgment . . . shall adjudge the costs against the defendant . . ."). The allowable types and amounts of costs are set by statute, *see* Tex. Code Crim. Proc. Ann. ch. 102 (West 2006 & Supp. 2014), and no cost may be imposed unless it is "expressly provided by law." *Id.* art. 103.002 (West 2006).

A trial court is allowed to assess attorneys' fees against a defendant who had court-appointed counsel if the trial court determines the defendant has financial resources enabling him to offset, in part or in whole, the costs of legal services provided. *See* Tex. Code Crim. Proc. Ann. art. 26.05(g) (West Supp. 2015). Article 26.05(g) of the Texas Code of Criminal Procedure requires a present factual determination of the defendant's financial resources without speculation about possible future resources. *See Cates v. State*, 402 S.W.3d 250, 252 (Tex. Crim. App. 2013).

Appellant was found to be indigent at trial and on appeal. Once found indigent, appellant is presumed to have remained indigent for the remainder of the proceedings absent a factual determination of a material change in his financial

circumstances. *See Cates*, 402 S.W.3d at 251; Tex. Code Crim. Proc. Ann. art. 26.04(p) (West Supp. 2015).

A review of the record reveals there was not a finding by the trial court that appellant's financial circumstances changed and he was able to re-pay the costs of court-appointed counsel. Therefore, there are insufficient facts in the record to rebut appellant's presumed indigence and justify the assessment of attorneys' fees against him under article 26.05(g). *See* Tex. Code Crim. Proc. Ann. art. 26.05(g).

The Code of Criminal Procedure allows a defendant convicted by a jury to be assessed jury fees. *See* Tex. Code Crim. Proc. Ann. art. 102.004 (jury fee), 102.0045 (fee for jury reimbursement to counties). Appellant was not convicted by a jury. Only fees expressly authorized by statute may be imposed against a criminal defendant. Tex. Code Crim. Proc. Ann. art. 103.002. Therefore, the judgment will be modified to remove the county and state jury fees.

Appellant also challenges the assessment of a sheriff's fee. Article 102.011 of the Code of Criminal Procedure authorizes assessment of fees for services of peace officers. *See* Tex. Code Crim. Proc. Ann. art. 102.011. That article lists numerous services for which a fee may be assessed and specifies the amount of the fee. The standard for upholding the imposition of a cost is whether there is a basis for that cost, not whether sufficient evidence supports the imposition. *Johnson v. State*, 423 S.W.3d 385, 390 (Tex. Crim. App. 2014). Because the sheriff's fee has a basis in law, the fee will remain in the judgment.

Accordingly, we reform the trial court's judgment to delete the assessment of attorneys' fees in the amount of \$1,025.00 and jury fees in the amount of \$0.40 (for the county) and \$5.60 (for the State). In an appeal in which counsel has filed an *Anders* brief, we are not required to abate the appeal for appointment of new counsel if the judgment may be reformed. *See Ferguson v. State*, 435 S.W.3d 291,

295 (Tex. App.—Waco 2014, no pet.) (reforming judgment in *Anders* appeal to correct age of child complainant); *Bray v. State*, 179 S.W.3d 725, 730 (Tex. App.—Fort Worth 2005, no pet.) (reforming judgment in *Anders* appeal to delete improper condition of parole); *see also Getts v. State*, 155 S.W.3d 153, 155 (Tex. Crim. App. 2005) (affirming court of appeals’ judgment reforming the judgment of conviction in *Anders* appeal).

Having reformed the judgment, as noted above, and having carefully reviewed the record and counsel’s brief, we agree the appeal is wholly frivolous and without merit. Further, we find no reversible error in the record. We are not to address the merits of each claim raised in an *Anders* brief or a pro se response when we have determined there are no arguable grounds for review. *See Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005).

Accordingly, the judgment of the trial court is affirmed, as reformed to delete the assessment of attorneys’ fees in the amount of \$1,025.00 and jury fees in the amount of \$0.40 (for the county) and \$5.60 (for the State).

PER CURIAM

Panel consists of Justices Christopher, McCally, and Busby.
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