



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00666-CR

Alesha Kay **PACE**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 198th Judicial District Court, Kerr County, Texas
Trial Court No. B14557
Honorable M. Rex Emerson, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Rebeca C. Martinez, Justice

Delivered and Filed: September 14, 2016

AFFIRMED AS MODIFIED; MOTION TO WITHDRAW GRANTED

Pursuant to a plea bargain agreement, Alesha Kay Pace pled guilty to aggravated assault with a deadly weapon. The trial court then deferred adjudication of guilt and placed her on community supervision for five years. Subsequently, the State filed a motion to revoke her deferred adjudication community supervision. At the revocation hearing, Pace pled true to having violated the terms and conditions of her community supervision, and the trial court found the allegations in the State's motion to be true. The trial court then found Pace guilty of aggravated assault with a

deadly weapon and sentenced her to five years of imprisonment. Pace timely filed a notice of appeal.

ANDERS

Pace's court-appointed appellate attorney has filed a brief in which he concludes that this appeal is frivolous and without merit. *See Anders v. California*, 386 U.S. 738 (1967); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). Counsel states that appellant was provided with a copy of the brief and motion to withdraw and was further informed of her right to review the record and file her own brief. *See Bruns v. State*, 924 S.W.2d 176, 177 n.1 (Tex. App.—San Antonio 1996, no pet.). Pace did not file a pro se brief. We have reviewed the record and counsel's brief. We agree that the appeal is frivolous and without merit.

ATTORNEY'S FEES

The trial court's judgment assesses \$325.00 in attorney's fees against Pace, and the certified bill of costs shows that Pace accrued \$325.00 in attorney's fees in this case. The record shows that the trial court found Pace to be indigent and appointed appellate counsel to represent her. "A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs." TEX. CODE CRIM. PROC. ANN. art. 26.04(p) (West Supp. 2015). Nothing in the record shows a material change in Pace's financial circumstances since the trial court determined that she was indigent. Absent a showing of a material change in Pace's financial circumstances, it was error to assess attorney's fees against her. *See Benavidez v. State*, 423 S.W.3d 520, 522 (Tex. App.—San Antonio 2014, no pet.); *see also Wiley v. State*, 410 S.W.3d 313, 320 (Tex. Crim. App. 2013). We therefore modify the judgment and the bill of costs to delete the assessment of attorney's fees against Pace. *See Yu Masaki v. State*, No. 04-13-00540-CR, 2014

WL 876010, at *1 (Tex. App.—San Antonio 2014, pet. ref'd); *Green v. State*, No. 04-13-00018-CR, 2013 WL 6200328, at *2 (Tex. App.—San Antonio 2013, no pet.).

As modified, the judgment of the trial court is affirmed. Furthermore, counsel's motion to withdraw is granted. *See Nichols v. State*, 954 S.W.2d 83, 85-86 (Tex. App.—San Antonio 1997, no pet.); *Bruns*, 924 S.W.2d at 177 n.1.¹

Karen Angelini, Justice

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¹ No substitute counsel will be appointed. Should Pace wish to seek further review of this case by the Texas Court of Criminal Appeals, she must either retain an attorney to file a petition for discretionary review or file a pro se petition for discretionary review. Any petition for discretionary review must be filed within thirty days from the later of (1) the date of this opinion; or (2) the date the last timely motion for rehearing is overruled by this court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed in the Texas Court of Criminal Appeals. *See* TEX. R. APP. P. 68.3. Any petition for discretionary review should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 68.4.