



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00645-CR

Lonnie Jerome James **ELLISON**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 175th Judicial District Court, Bexar County, Texas
Trial Court No. 2016CR10112C
Honorable Catherine Torres-Stahl, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: June 16, 2021

MOTION TO WITHDRAW GRANTED; AFFIRMED AS MODIFIED

Lonnie Jerome James Ellison appeals the judgment in which he was adjudicated guilty of aggravated robbery with a deadly weapon and sentenced to life in prison. We modify the assessment of costs in the judgment and affirm the judgment as modified.

Ellison entered into a plea bargain with the State, agreeing to plead nolo contendere to aggravated robbery with a deadly weapon, a first degree felony, in exchange for the State's recommendation that punishment be assessed at ten years in prison and a fine of \$1,500. The State opposed deferring adjudication or granting community supervision. The trial court accepted

Ellison's plea on October 31, 2017, found the State's evidence sufficient to establish guilt, and set the case for a sentencing hearing. On December 28, 2017, the trial court deferred adjudication and placed Ellison on community supervision for a period of ten years.

The State filed motions to adjudicate guilt, alleging Ellison committed multiple violations of the terms and conditions of his community supervision. In four of the allegations, the State asserted that in an incident on July 4, 2018, Ellison committed the offenses of murder, two counts of aggravated assault with a deadly weapon, and unlawfully carrying a weapon. The State further alleged that in April 2019, Ellison committed four separate offenses of possessing a deadly weapon in a penal institution. Two paragraphs alleged Ellison violated condition number 11 in July 2018 and April 2019 by purchasing, receiving, possessing, or transporting a weapon. Four additional allegations that related to employment, education, community service, and payment of fees were later waived by the State. The court set the motion for hearing and granted Ellison's motion for appointment of an expert to assist in mitigation of punishment.

The court held a hearing over three days in July 2019, during which the court heard sixteen witnesses and admitted over 100 exhibits. The State presented evidence that Ellison participated in an attempted drug buy in July 2018. When the sale was not completed, Ellison and his accomplices followed the sellers and fired weapons into the sellers' vehicle, resulting in one person dead and two with serious injuries. The State also presented evidence that four pieces of sharpened metal, or "shanks", were found in Ellison's cell in the Bexar County jail during a random inspection in April 2019. The State stipulated to the defense mitigation expert's report, and it was admitted into evidence.

The trial court found the allegations that Ellison committed eight new offenses and committed two violations of paragraph 11 to be true. The court revoked Ellison's community supervision, adjudicated Ellison guilty of aggravated robbery, and made an affirmative deadly

weapon finding. The court fined Ellison \$2000 and sentenced him to life in prison. In addition, the trial court imposed court costs on Ellison in the amount of \$334.00.

Ellison's court-appointed appellate attorney has filed a motion to withdraw and a brief in which he concludes this appeal is frivolous and without merit. The brief demonstrates a professional and thorough evaluation of the record and meets the requirements of *Anders v. California*, 386 U.S. 738 (1967), *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. [Panel Op.] 1978), and *Gainous v. State*, 436 S.W.2d 137 (Tex. Crim. App. 1969). Counsel sent copies of the brief and motion to withdraw to Ellison and informed Ellison of his rights in compliance with the requirements of *Kelly v. State*, 436 S.W.3d 313 (Tex. Crim. App. 2014). This court provided Ellison with a copy of the appellate record.

Ellison filed a pro se brief in which he contends he received ineffective assistance of counsel, argues the prosecution engaged in misconduct and violated his right to due process by presenting the allegedly perjured testimony of an incredible accomplice witness, and complains generally about the laws and procedures governing the revocation of community supervision and adjudication of guilt. We have thoroughly reviewed the record, counsel's brief, and Ellison's pro se brief. We conclude there is no reversible error and agree with counsel the appeal is frivolous. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005).

The clerk's record contains the certified bill of costs. *See* TEX. CODE CRIM. PROC. ANN. art. 103.006 (providing that if a criminal action is appealed, an officer of the court shall certify and sign a bill of costs stating the costs that have accrued and send the bill of costs to the appellate court). The bill of costs includes the \$2000 fine imposed by the trial court and itemizes the \$334 assessed against Ellison as costs. The itemization reflects that the bill of costs includes a \$25 Time Payment Fee, imposed pursuant to former section 133.103(a) of the Texas Local Government

Code.¹ In *Dulin v. State*, 620 S.W.3d 129 (Tex. Crim. App. 2021), the Court of Criminal Appeals held the assessment of the time payment fee while an appeal is pending is premature. The court held the fee should be struck in its entirety without prejudice to it being assessed later if, more than thirty days after issuance of the appellate mandate, the defendant has failed to pay any fine, court costs, or restitution he owes. 620 S.W.3d at 133. We therefore modify the trial court’s judgment to reflect that Ellison’s court costs are \$309 by deleting the time payment fee, without prejudice to it being assessed later, if appropriate. *See Ferguson v. State*, 435 S.W.3d 291, 293–94 (Tex. App.—Waco 2014, pet. stricken) (explaining appellate courts have authority in *Anders* cases to reform judgments and affirm as modified); *Davis v. State*, 323 S.W.3d 190, 198 (Tex. App.—Dallas 2008, pet. ref’d) (holding court of appeals is authorized to modify an incorrect judgment when it has the necessary data and information to do so).

We grant counsel’s motion to withdraw. We modify the judgment to delete the \$25 time payment fee, without prejudice to the fee being assessed later if appropriate. We affirm the trial court’s judgment as modified.²

Luz Elena D. Chapa, Justice

DO NOT PUBLISH

¹ Section 133.103 of the Local Government Code was redesignated as article 102.030 of the Texas Code of Criminal Procedure and amended by Act of May 23, 2019, 86th Leg., R.S., ch. 1352, §§ 2.54, 4.40(33) (effective Jan. 1, 2020).

² No substitute counsel will be appointed. Should Ellison wish to seek further review of this case by the Texas Court of Criminal Appeals, he 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 after either this opinion is rendered or the last timely motion for rehearing or motion for en banc reconsideration is overruled by this court. *See* TEX. R. APP. P. 68.2. Any petition for discretionary review must be filed with the clerk of the Court of Criminal Appeals and must comply with the requirements of rule 68.4 of the Texas Rules of Appellate Procedure. *See id.* Rules 68.3, 68.4.