

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-11-00042-CR**

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**BRYAN EDWIN BOLDT, JR., Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 163rd District Court**  
**Orange County, Texas**  
**Trial Cause No. B-010470-R**

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**MEMORANDUM OPINION**

Bryan Edwin Boldt, Jr., pled guilty to aggravated sexual assault of a child. The trial court deferred adjudication of guilt and placed Boldt on community supervision, but proceeded with an adjudication of guilt and sentenced Boldt to forty years of imprisonment after Boldt pled true to violating a condition of community supervision by initiating, maintaining or establishing contact with a minor child. The sole issue raised on appeal contends that the trial court erred by assessing a fine and ordering court costs in

its written judgment. We modify the trial court's judgment and, as modified, affirm the judgment.

Boldt contends the fine and court costs cannot be included in the judgment because neither the fine nor the court costs were orally pronounced at the time of sentencing. The trial court imposed a \$500 fine in the 2002 community supervision order. In 2011, no fine was mentioned in the oral pronouncement of sentence after the trial court adjudicated guilt.

“[W]hen there is a variation between the oral pronouncement of sentence and the written memorialization of the sentence, the oral pronouncement controls.” *Coffey v. State*, 979 S.W.2d 326, 328 (Tex. Crim. App. 1998). When the trial court revokes an order for deferred adjudication community supervision, a fine that was imposed in the original plea proceeding cannot be included in the judgment adjudicating guilt unless the trial court orally pronounces the fine at the adjudication hearing. *Taylor v. State*, 131 S.W.3d 497, 501-02 (Tex. Crim. App. 2004). The trial court did not assess the fine in the oral pronouncement of sentence when guilt was adjudicated; accordingly, the inclusion of the fine in the written judgment was error. *Id.*

Court costs are not punitive and therefore do not have to be included in the oral pronouncement of sentence as a precondition to their inclusion in the trial court's written judgment. *Weir v. State*, 278 S.W.3d 364, 367 (Tex. Crim. App. 2009). Because court costs need not be orally pronounced, the inclusion of court costs in the written judgment

was not error. *Id.* Boldt does not challenge the sufficiency of the evidence supporting the order to pay costs. *See, e.g., Mayer v. State*, 309 S.W.3d 552, 556 (Tex. Crim. App. 2010) (claim of evidentiary insufficiency of evidence supporting order to pay court-appointed-attorney fees). Boldt's sole issue is sustained in part and overruled in part.

We modify the trial court's judgment to delete the \$500 fine, and as modified, affirm the judgment.

AFFIRMED AS MODIFIED.

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CHARLES KREGER  
Justice

Submitted on August 25, 2011  
Opinion Delivered August 31, 2011  
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.