

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

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**NO. 09-11-00154-CR**

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**VANCE DEPORRES VALLAIR, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 252nd District Court**  
**Jefferson County, Texas**  
**Trial Cause No. 07-00472**

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**MEMORANDUM OPINION**

Appellant Vance Deporres Vallair appeals from the trial court's revocation of his community supervision and adjudication of guilt. On April 12, 2007, a grand jury indicted Vallair for the possession of a controlled substance, namely cocaine. On September 20, 2007, Vallair pled guilty to the offense and the trial court found the evidence sufficient to find Vallair guilty but deferred further proceedings and placed him on community supervision for three years and assessed a fine of \$500. As a condition of his supervision, the trial court ordered Vallair to pay \$60 a month in supervision fees.

Due to multiple alleged violations of his community supervision, on August 19, 2008, the administrative hearing officer recommended that the trial court revoke Vallair's community supervision. The trial court did not follow the recommendation, but instead, on August 26, 2008, the court ordered Vallair to serve a term of 180 days in the state jail. On August 19, 2010, the trial court extended Vallair's probation for one year. On November 23, 2010, after multiple allegations that Vallair continued to violate the terms of his community supervision, the State filed a motion to revoke.

At the February 2011 motion to revoke hearing, Vallair pled "true" to five violations of the conditions of his community supervision. The trial court found Vallair guilty of the offense of possession of a controlled substance, and assessed punishment at eighteen months in state jail. Vallair does not challenge his conviction, but rather he challenges the amount of time credited to his sentence and the trial court's calculation of his administrative fees. We affirm the judgment as modified.

### **Time Credit**

In his first issue, Vallair argues that it was error for the trial court to leave blank the "Time Credited" space on the judgment. The trial court noted at Vallair's sentencing hearing that Vallair would receive credit for all time served to which he is entitled by law. The judgment reflects that the trial court credited Vallair for six periods of confinement, including: 01/05/2007 to 01/10/2007; 04/13/2007 to 06/06/2007; 09/13/2007 to 09/20/2007; 08/06/2009 to 03/04/2010; 08/20/2010 to 09/03/2010; and 12/10/2010 to

02/22/2011. As this portion of the judgment is not blank, we conclude that Vallair misread the judgment and overrule issue one.

In issues two and three, Vallair argues that he did not receive credit for his confinement from July 31, 2009 to August 6, 2009, which he claims occurred after his arrest but before he began his 180-day confinement. Vallair contends that the trial court's order requiring his confinement for 180 days in state jail denied him due credit by ordering that "[t]his term is to begin on admission to the State Jail without any county jail time credit[.]" He argues that the denial of this credit is constitutional error.

Article 42.03 provides that a trial court is required to award a defendant time credit toward his sentence for any time spent in jail from the time of his arrest and confinement until his sentence by the trial court, other than confinement served as a condition of community supervision. Tex. Code Crim. Proc. Ann. art. 42.03 § 2(a)(1) (West Supp. 2010). The trial court has discretion to decide whether a defendant receives credit for time spent in confinement as a condition of community supervision. *Ex parte Walker*, 150 S.W.3d 429, 432 (Tex. Crim. App. 2004). The trial court amended the terms of Vallair's community supervision and ordered Vallair to spend 180 days in state jail as a condition of his continued community supervision. Vallair complains that he did not receive credit for his confinement from July 31, 2009 to August 6, 2009. The record reflects that the sheriff's office was unable to arrest Vallair to serve the 180-day term until August 6, 2009. The judgment reflects that the trial court credited Vallair for the time period from August 6, 2009 to March 4, 2010. There is no indication in the record

before this Court that Vallair was confined from July 31, 2009 to August 5, 2009. Accordingly, we find no error and overrule issues two and three.

### **Community Supervision Fees**

In issue four, Vallair argues that he was erroneously charged \$60 a month in community supervision fees for the seven months he was confined from July 31, 2009 to March 4, 2010.<sup>1</sup> Article 103.002 provides that “[a]n officer may not impose a cost for a service not performed or for a service for which a cost is not expressly provided by law.” Tex. Code Crim. Proc. Ann. art. 103.002 (West 2006). Article 42.12 gives a trial court the authority to fix a fee for community supervision of not less than \$25 and not more than \$60 a month to be paid to the court by the defendant during the community supervision period. *Id.* art. 42.12, § 19(a) (West Supp. 2010).

The judgment in this case reflects that Vallair owes \$3,777 in administrative fees. The administrative fee balance sheet indicates that \$2,160 of the administrative fees account for community supervision charges. The State concedes that the trial court should not have held Vallair responsible for supervision fees that had not yet accrued at the time Vallair’s community supervision was revoked.

Relying on the periods of confinement listed in the judgment, we determine Vallair was on community supervision for approximately thirty-one months. We

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<sup>1</sup> In making this argument, Vallair relies on information he received from his probation officer, which is not properly before this Court and therefore not considered. *See Beck v. State*, 573 S.W.2d 786, 788 (Tex. Crim. App. 1978) (holding that an appellate court cannot accept fact allegations or assertions in an appellant’s brief which are not supported by the record).

calculate Vallair's total supervision fee for this time at \$1,860.<sup>2</sup> This amount is \$300 less than the supervision fee imposed by the trial court. We subtract this difference from the \$3,777 in administrative fees and arrive at a total of \$3,477. We agree with Vallair that the trial court imposed a supervision fee in excess of the amount owed for a period of community supervision.

### **Attorney Fees**

In issues five and six, Vallair argues that the trial court erred in assessing attorney fees when he was indigent and there is no evidence of his ability to pay appointed fees. The administrative fee balance sheet indicates that \$600 of the administrative fees are attributable to attorney fees.

Article 26.04(p) of the Code of Criminal Procedure provides that “[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. 2010). The Code further gives the trial court the authority to order a defendant to pay, in whole or in part, the costs of appointed counsel, if the court determines that the defendant has financial resources that enable him to offset the costs of his legal services. *Id.* art. 26.05(g).

Here, the trial court determined Vallair was indigent when it initially appointed him counsel, and again when it appointed him counsel to represent him in this appeal.

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<sup>2</sup> We have assessed a \$60 fee for each month Vallair spent on community supervision. From this assessment, we calculated the total supervision fee at \$1,860.

We find no evidence in the record to support a finding that Vallair's financial circumstances had materially changed. *Id.* art. 26.04(p); *see also Roberts v. State*, 327 S.W.3d 880, 883-84 (Tex. App.—Beaumont 2010, no pet.). There is no determination or finding in the record that Vallair had financial resources that would enable him to pay the appointed attorney fees. Without evidence to demonstrate this ability, the trial court erred in ordering reimbursement of appointed attorney fees. *See Mayer v. State*, 274 S.W.3d 898, 901-02 (Tex. App.—Amarillo 2008), *aff'd*, 309 S.W.3d 552 (Tex. Crim. App. 2010). We subtract the \$600 in appointed attorney fees from the administrative fees. We modify the trial court's judgment to reflect an administrative fee of \$2,877. The judgment is affirmed as modified.<sup>3</sup>

AFFIRMED AS MODIFIED.

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CHARLES KREGER  
Justice

Submitted on August 4, 2011  
Opinion Delivered August 24, 2011  
Do not publish

Before McKeithen, C.J., Gaultney and Kreger, JJ.

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<sup>3</sup> *See Tex. R. App. P. 43.2(b); Asberry v. State*, 813 S.W.2d 526, 529-30 (Tex. App.—Dallas 1991, pet. ref'd).