

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00187-CR

REGINALD TISON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 221st District Court
Montgomery County, Texas
Trial Cause No. 12-09-09870 CR

MEMORANDUM OPINION

Reginald Tison (Tison) pleaded guilty to aggravated assault with a deadly weapon, a second-degree felony. *See* Tex. Penal Code Ann. § 22.02(a)(2) (West 2011). The trial court deferred the adjudication of Tison’s guilt, placed Tison on community supervision for five years, and assessed a \$2500 fine. Subsequently, the State filed a motion to adjudicate alleging Tison committed seven violations of the terms of his community supervision. During the hearing on the State’s motion to adjudicate, Tison pleaded “true” to four of the alleged violations, and he pleaded

“not true” to three violations. The trial court found that Tison had violated the terms and conditions of his probation, adjudicated Tison’s guilt, and sentenced him to eight years in prison. Tison timely filed a notice of appeal.

Tison’s appellate counsel filed a brief that presents counsel’s professional evaluation of the record and concludes the appeal is frivolous. *See Anders v. California*, 386 U.S. 738 (1967); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). We granted an extension of time for Tison to file a *pro se* brief. Tison did not file a *pro se* brief in response.

We have determined that this appeal is wholly frivolous. We have independently examined the entire appellate record in this matter, and we agree that no arguable issues support an appeal. Therefore, we find it unnecessary to order appointment of new counsel to re-brief the appeal. *Compare Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991).

However, the trial court’s judgment includes an error that is capable of being reformed without the involvement of the trial court. The trial court determined that Tison was indigent, but then in its judgment the trial court included an award of attorney’s fees even though there was no evidence before the court to show that Tison’s indigency status had changed. Absent a change in a defendant’s status as an indigent, a trial court is not authorized to impose an award of attorney’s fees in

the judgment against a defendant who remains indigent when the judgment is pronounced. *See* Tex. Code Crim. Proc. Ann. arts. 26.04(p), 26.05(g) (West Supp. 2015); *see also* *Wiley v. State*, 410 S.W.3d 313, 317 (Tex. Crim. App. 2013); *Roberts v. State*, 327 S.W.3d 880, 884 (Tex. App.—Beaumont 2010, no pet.).

We forwarded a letter to the parties wherein we inquired whether the parties would agree to the deletion of the award of attorney’s fees. In response to our correspondence, counsel for the State agreed that the award should be deleted, and Tison did not respond. We are authorized by the Texas Rules of Appellate Procedure to render the judgment the trial court should have rendered. *See* Tex. R. App. P. 43.2, 43.3. Because the matter is not contested and the record does not support the award of attorney’s fees, we reform the judgment the trial court rendered by deleting the award of \$956.25 in attorney’s fees. We affirm the trial court’s judgment as reformed.¹

AFFIRMED AS REFORMED.

LEANNE JOHNSON
Justice

¹ Tison may challenge our decision in this case by filing a petition for discretionary review. *See* Tex. R. App. P. 68.

Submitted on January 11, 2016
Opinion Delivered February 3, 2016
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Before Kreger, Horton and Johnson, JJ.