

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00260-CR

JARED KEITH LEE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 1A District Court
Jasper County, Texas
Trial Cause No. 12344JD

MEMORANDUM OPINION

On December 2, 2014, Jared Keith Lee (Lee) was indicted for unlawful possession of a firearm by a felon. *See* Tex. Penal Code Ann. § 46.04(a) (West 2011). On April 15, 2015, Lee pleaded guilty to the offense, and the trial court deferred adjudication, placed Lee on community supervision for five years, and assessed a \$1,500.00 fine. The State filed a motion to revoke alleging that Lee had violated a condition of his community supervision. Lee pleaded “not true” to the alleged

violation. After a hearing on June 22, 2016, the trial court found the evidence was sufficient that Lee had violated a term of his community supervision, and the trial court assessed punishment at confinement for ten years. Lee timely filed a notice of appeal.

Lee's appellate counsel filed a brief that presents counsel's professional evaluation of the record and concludes there are no meritorious issues for appeal. *See Anders v. California*, 386 U.S. 738 (1967); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). On February 22, 2017, we granted an extension of time for Lee to file a pro se brief. We received no response from Lee.

After reviewing the clerk's record and the reporter's record, it is apparent that the trial court assessed restitution in the written judgment that it did not impose in the oral rendition of judgment. When the oral pronouncement of a sentence and the written judgment conflict, the oral pronouncement controls. *Taylor v. State*, 131 S.W.3d 497, 500, 502 (Tex. Crim. App. 2004). When Lee received deferred adjudication, he was ordered to pay \$2,423.83 in restitution to the victim of his offense. However, when a trial court adjudicates guilt, the order adjudicating guilt sets aside the order deferring adjudication. *Id.* at 501-02. Because the trial court did not orally pronounce the restitution award when it sentenced Lee, the trial court erred by including it in the final written judgment. Therefore, the restitution award must

be deleted from the judgment. *See id.* at 502; *see also Alexander v. State*, 301 S.W.3d 361, 364 (Tex. App.—Fort Worth 2009, no pet.) (affirming trial court’s judgment as modified where judgment included payment of restitution that was not orally pronounced). We modify the trial court’s written judgment to delete the restitution award of \$2,153.83.

After reviewing the appellate record and the *Anders* brief, we find no other arguable grounds for appeal. Therefore, we find it unnecessary to order appointment of new counsel to re-brief the appeal. *Cf. Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). We affirm the trial court’s judgment, as modified.¹

AFFIRMED AS MODIFIED.

LEANNE JOHNSON
Justice

Submitted on May 25, 2017
Opinion Delivered May 31, 2017
Do Not Publish

Before McKeithen, C.J., Horton and Johnson, JJ.

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