

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

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**NO. 09-16-00379-CR**  
**NO. 09-16-00380-CR**  
**NO. 09-16-00381-CR**

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**ANNA MERCEDEZ GUTIERREZ, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 410th District Court**  
**Montgomery County, Texas**  
**Trial Cause Nos. 08-01-00886-CR, 08-01-00889-CR (Counts 1 and 2)**

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**MEMORANDUM OPINION**

In an open plea, Anna Mercedes Gutierrez (Gutierrez) pleaded guilty to aggravated robbery in trial cause number 08-01-00886-CR, pleaded guilty to aggravated robbery in Count 1 of trial cause number 08-01-00889-CR, and pleaded guilty to aggravated assault on a public servant in Count 2 of trial cause number 08-01-00889-CR. *See* Tex. Penal Code Ann. §§ 22.02(b)(2), 29.03(a)(2) (West 2011).

Gutierrez waived a jury trial. The trial court assessed a twenty-year sentence for each aggravated robbery count and a five-year sentence for the aggravated assault on a public servant count, and ordered that the sentences be served concurrently. The Texas Court of Criminal Appeals granted Gutierrez an out-of-time appeal.

Gutierrez's appellate counsel filed a brief that presents counsel's professional evaluation of the record and concludes that the appeal is frivolous and there are no meritorious claims for appeal. *See Anders v. California*, 386 U.S. 738 (1967); *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). On March 13, 2017, we granted an extension of time for Gutierrez to file a pro se brief. On March 27, 2017, we received a letter from Gutierrez, in which she does not raise any arguable error concerning the proceedings in the trial court. We have independently reviewed the appellate record, and we agree with counsel's conclusion that no arguable issues support the 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). However, during our review of the record, we observed that the trial court's written judgment in trial cause number 08-01-00886-CR includes an error that is capable of being reformed without the involvement of the trial court. The trial court determined that Gutierrez was indigent but then rendered an award of attorney's fees even though there was no evidence before the court to show that

Gutierrez’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. 2016); *see also* *Wiley v. State*, 410 S.W.3d 313, 315, 317 (Tex. Crim. App. 2013); *Roberts v. State*, 327 S.W.3d 880, 884 (Tex. App.—Beaumont 2010, no pet.).

We asked the parties whether they would agree to the deletion of the award of attorney’s fees. In response to our correspondence, all parties agreed that the attorney’s fee award should be deleted. 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, we modify the judgment in trial cause number 08-01-00886-CR by deleting the award of \$2,000.00 in attorney’s fees. We also modify the judgments for Counts 1 and 2 of trial cause number 08-01-00889-CR by deleting the language “see cause #080100886” from the section of the judgments entitled “Atty. Fees[.]” Otherwise, we affirm the trial court’s judgments as modified.<sup>1</sup>

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<sup>1</sup> Gutierrez may challenge our decision in these cases by filing a petition for discretionary review. *See* Tex. R. App. P. 68.

AFFIRMED AS MODIFIED.

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LEANNE JOHNSON  
Justice

Submitted on May 15, 2017  
Opinion Delivered May 31, 2017  
Do Not Publish

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