

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

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**NO. 09-17-00100-CR**  
**NO. 09-17-00101-CR**

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**CHAD WILLIAM DERESE, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the Criminal District Court**  
**Jefferson County, Texas**  
**Trial Cause Nos. 13-17169, 13-17170**

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**MEMORANDUM OPINION**

These are appeals from the trial court's revocation of appellant Chad William Derese's deferred adjudication community supervision and the imposition of punishment. We affirm the trial court's judgment in appeal number 09-17-00100-CR and affirm as modified the trial court's judgment in appeal number 09-17-00101-CR.

Pursuant to plea bargain agreements, Derese pleaded guilty as a habitual offender to robbery and evading arrest or detention with a motor vehicle. In both cases, the trial court found the evidence sufficient to find Derese guilty, but deferred further proceedings, placed Derese on community supervision for ten years, and assessed a fine of \$1000. The State filed a motion to revoke Derese's unadjudicated community supervision in each case. In both cases, Derese pleaded "true" to more than one violation of the conditions of his community supervision, and the trial court found that Derese had violated the conditions of his community supervision, found him guilty of robbery and evading arrest, and assessed punishment at twenty-five years of confinement in each case. The trial court ordered that the sentences would run concurrently.

Derese appealed his convictions to this Court, and his counsel filed *Anders* briefs, in which he concluded that the appeals were frivolous. *Derese v. State*, Nos. 09-16-00040-CR, 09-16-00041-CR, 2016 WL 5853284 (Tex. App.—Beaumont Oct. 5, 2016, no pet.). After reviewing the appellate records and concluding that no arguable error supported the appeals, this Court issued an opinion affirming the trial court's judgments. *Id.* at \*1. Our judgment issued on October 5, 2016, and our mandate issued on November 29, 2016.

This Court erred by affirming the trial court's judgments instead of dismissing the appeals for lack of jurisdiction because the appellate records of both cases contain an order granting Derese's motions for new trial while the trial court retained plenary power. Accordingly, the trial court retained jurisdiction of the cases, and this Court lacked jurisdiction. *See* Tex. R. App. P. 21.9(b) (providing that granting a new trial restores a case to its position before the former trial); *Waller v. State*, 931 S.W.2d 640, 643–44 (Tex. App.—Dallas 1996, no pet.) (holding that when a motion for new trial is granted in a criminal case, there is no sentence to be appealed, and the appellate court therefore lacks jurisdiction). When this Court purported to affirm the judgments, they no longer existed. *See* Tex. R. App. P. 21.9(b). A judgment is void when it is apparent that the Court rendering the judgment had no jurisdiction over the parties or the subject matter. *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990). Accordingly, the judgments this Court issued in those appeals are void because this Court lacked appellate jurisdiction. *See Nix v. State*, 65 S.W.3d 664, 667–68 (Tex. Crim. App. 2001) (holding that a void judgment is a nullity); *Ex parte Seidel*, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001). It is axiomatic that, because our judgments are void, the mandates that this Court issued to the trial court to enforce those judgments are likewise void and of no effect. *See Tex. Parks & Wildlife Dept. v. Dearing*, 240 S.W.3d 330, 347 (Tex. App.—Austin 2007, pet. denied) (holding

that a mandate issued by an appellate court is a formal command requiring the lower court to comply with the appellate court's judgment and is a means of enforcing the judgment); *see also Nix*, 65 S.W.3d at 667–68. Accordingly, although we agree with the State that we erred in appeal numbers 09-16-00040-CR and 09-16-00041-CR by affirming the causes rather than dismissing them for lack of jurisdiction, we reject the State's contention that our judgments and mandates deprived the trial court of jurisdiction over the cases, thereby creating an arguable ground for Derese's appeals.

After the trial court granted Derese's motion for new trial in both cases, the trial court continued Derese's deferred adjudication community supervision and imposed special conditions. The State subsequently filed a motion to revoke Derese's unadjudicated community supervision in both cases. In each case, Derese pleaded "true" to one allegation, and pleaded "not true" to four allegations. After conducting an evidentiary hearing, the trial court found that Derese had violated several conditions of his community supervision, found Derese guilty of robbery and evading arrest, and assessed punishment at twenty-five years of confinement in each case. The trial court ordered that the sentences would run concurrently.

In appeal number 09-17-00100-CR (trial cause number 13-17169), the robbery case, 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). On June 8, 2017, we granted an extension of time for Derese to file a *pro se* brief. We received no response from Derese. We have 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). We affirm the trial court's judgment in appeal number 09-17-00100-CR (trial cause number 13-17169).<sup>1</sup>

With respect to appeal number 09-17-00101-CR (trial cause number 13-17170), the evading arrest or detention with a motor vehicle case, counsel filed a merits brief, in which his sole issue challenges the assessment of costs because that case was tried in the same proceeding as appeal number 09-17-00100-CR (trial cause number 13-17169). The State concedes that the trial court erred by assessing court costs against Derese in appeal number 09-17-00101-CR (trial cause number 13-17170).

Article 102.073 of the Texas Code of Criminal Procedure provides as follows, in pertinent part:

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

- (a) In a single criminal action in which a defendant is convicted of two or more offenses or of multiple counts of the same offense, the court may assess each court cost or fee only once against the defendant.
- (b) In a criminal action described by Subsection (a), each court cost or fee the amount of which is determined according to the category of offense must be assessed using the highest category of offense that is possible based on the defendant's convictions.

Tex. Code Crim. Proc. Ann. art. 102.073(a), (b) (West Supp. 2016). The appellate records reflect, and the State concedes, that the robbery and evading arrest cases were tried in the same criminal action. Because robbery is a second-degree felony and evading arrest or detention with a motor vehicle is, as alleged in the indictment, a third-degree felony, the trial court should not have assessed costs against Derese in the evading arrest case (trial cause number 13-17170). *See id.*; Tex. Penal Code Ann. § 29.02(b) (West 2011) (providing that robbery is a second-degree felony); Tex. Penal Code Ann. § 38.04(b)(2)(A) (West Supp. 2016) (providing that evading arrest or detention with a vehicle is a third-degree felony); *see also Hurlburt v. State*, 506 S.W.3d 199, 203–04 (Tex. App.—Waco 2016, no pet.). Accordingly, we sustain Derese's sole issue and modify the judgment in trial cause number 13-17170 to delete the trial court's assessment of court costs in the amount of \$683. We affirm the trial court's judgment in trial cause number 13-17170 as modified.

AFFIRMED; AFFIRMED AS MODIFIED.

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STEVE McKEITHEN  
Chief Justice

Submitted on September 11, 2017  
Opinion Delivered November 8, 2017  
Do Not Publish

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