



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-15-00452-CR

FRANKIE DOYLE BONE

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 355TH DISTRICT COURT OF HOOD COUNTY
TRIAL COURT NO. CR12476

MEMORANDUM OPINION¹

Appellant Frankie Doyle Bone appeals his conviction for possession of a controlled substance—one gram or more but less than four grams of heroin, a Penalty Group 1 substance—with intent to deliver, which the trial court entered after revoking his deferred adjudication community supervision, and for which the trial court sentenced him to twenty years' confinement. See Tex. Health & Safety

¹See Tex. R. App. P. 47.4.

Code Ann. §§ 481.102, .112(c) (West 2010); see also Tex. Penal Code Ann. § 12.33 (West 2011) (stating that the punishment range for a second-degree felony is a term of not more than 20 years or less than 2 years and that in addition to imprisonment, punishment may include a fine not to exceed \$10,000).

Bone's court-appointed appellate counsel filed a motion to withdraw as counsel and a brief in support of that motion.² Bone's counsel pointed out in his *Anders* brief that the trial court did not pronounce a fine at sentencing but nonetheless assessed a \$2,000 fine in the judgment, and he asked this court to correct the judgment to delete the fine. In a letter filed with this court in lieu of a brief, the State agreed that the fine should be deleted from the judgment.

Once an appellant's court-appointed attorney files a motion to withdraw on the ground that the appeal is frivolous and fulfills the requirements of *Anders*, this court is obligated to undertake an independent examination of the record. See *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991); *Mays v. State*, 904 S.W.2d 920, 922–23 (Tex. App.—Fort Worth 1995, no pet.). Only then may we grant counsel's motion to withdraw. See *Penson v. Ohio*, 488 U.S. 75, 82–83, 109 S. Ct. 346, 351 (1988).

We have carefully reviewed the record and counsel's brief. In our independent review of the record, in addition to the \$2,000 unpronounced fine, we noticed that the judgment adjudicating Bone's guilt reflects that he pleaded

²See *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967).

“true” to the State’s allegations B through F but that the record reflects that Bone pleaded “not true.”

We also noticed a discrepancy between the trial court’s appointment of counsel for Bone on January 16, 2014, and its assessment of \$400 in attorney’s fees after a hearing on February 4, 2014. Those fees were subsequently incorporated into the judgment adjudicating guilt as part of Bone’s court costs. We requested that the record be supplemented with the reporter’s record of the February 4 hearing, and the court reporter filed the supplemental reporter’s record on July 15, 2016. We also requested supplementation of the clerk’s record with regard to some of the other fees assessed in the bill of costs, and the trial court clerk filed the supplemental clerk’s record on July 22, 2016.³

After supplementing the record, we held the appeal in abeyance to allow Bone’s appointed counsel and the State the opportunity to consider these supplemental records. Bone’s appointed counsel filed a supplemental *Anders* brief, and Bone was given the opportunity to file a pro se response to that brief, but he did not do so. The State did not file anything in response to the supplemental *Anders* brief.

In his supplemental brief, Bone’s appointed counsel asserted that the \$400 in attorney’s fees should be deleted because the evidence is insufficient to

³When the trial court clerk reviewed the costs before submitting the basis for them in response to our supplementation request, the trial court clerk discovered and removed an incorrectly-assessed extra \$5 witness-summoning fee.

support them when the trial court had previously determined Bones's indigence. We have reviewed the supplemental record, and we agree with counsel's assessment, as the record is devoid of any evidence of a change in Bone's financial circumstances. See Tex. Code Crim. Proc. Ann. arts. 26.04(p), 26.05(g) (West Supp. 2016); *Johnson v. State*, 423 S.W.3d 385, 389 (Tex. Crim. App. 2014); see also *Lewis v. State*, 423 S.W.3d 451, 454 (Tex. App.—Fort Worth 2013, pet. ref'd) (“[O]nce a trial court makes a finding that a defendant is indigent, absent evidence of a substantial change in the defendant's financial circumstances, the defendant is presumed to remain indigent for the remainder of the proceedings.”).

Therefore, we modify the judgment to delete the unpronounced \$2,000 fine and the \$400 in attorney's fees and to reflect that Bone pleaded “not true” to the State's allegations B through F. See *Bray v. State*, 179 S.W.3d 725, 726 (Tex. App.—Fort Worth 2005, no pet.) (en banc). We likewise modify the bill of costs and the order to withdraw funds to delete the \$2,000 fine and the \$400 in attorney's fees. We otherwise agree with counsel that the appeal is wholly frivolous and without merit; we find nothing else in the record that might arguably support it. See *Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005); see also *Meza v. State*, 206 S.W.3d 684, 685 n.6 (Tex. Crim. App. 2006). Accordingly, we grant counsel's motion to withdraw and affirm the trial court's judgment, order to withdraw funds, and bill of costs as modified.

/s/ Bonnie Sudderth
BONNIE SUDDERTH
JUSTICE

PANEL: MEIER, GABRIEL, and SUDDERTH, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: December 15, 2016