



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

NO. 02-17-00009-CR

MORGAN BRADLEY

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 371ST DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1430374D

MEMORANDUM OPINION¹

In two issues, Appellant Morgan Bradley argues that we should modify a judgment adjudicating her guilty of aggravated perjury by deleting the fine and by either deleting or reducing the reparations owed. We will delete the fine, reduce the reparations, and affirm as modified.

In November 2015, pursuant to a plea bargain, Bradley pleaded guilty to aggravated perjury. The trial court placed her on five years' deferred

¹See Tex. R. App. P. 47.4.

adjudication community supervision and assessed a \$500.00 fine. The State later filed a petition to proceed to adjudication, alleging that Bradley had failed to comply with several terms and conditions of her community supervision. At a hearing on the State's petition, Bradley pleaded true to four of the State's allegations, and the trial court adjudicated her guilty of aggravated perjury. When the trial court pronounced Bradley's punishment, it sentenced her to eight years' confinement but did not assess a fine or reparations. The judgment adjudicating Bradley's guilt, however, reflects a fine in the amount of \$381.94 and reparations in the amount of \$945.00.

In her first issue, Bradley argues that the judgment adjudicating her guilt should be modified to delete the \$381.94 fine because the trial court did not assess the fine when it orally pronounced her sentence. The State agrees that the judgment should be so modified. So do we.

When an accused receives deferred adjudication community supervision, no sentence is imposed. *Taylor v. State*, 131 S.W.3d 497, 502 (Tex. Crim. App. 2004). Then, when guilt is adjudicated, the order adjudicating guilt sets aside the order deferring adjudication, including any previously imposed fine. *Id.* When a variation exists between the oral pronouncement of sentence and the written memorialization of the sentence, the oral pronouncement controls. *Id.*

The trial court included a fine in the order of deferred adjudication, but the subsequent judgment adjudicating Bradley's guilt set aside that order. Because the trial court did not include a fine in its oral pronouncement of sentence at

Bradley's revocation hearing, we must modify the judgment adjudicating her guilt to delete the \$381.94 fine.² See *id.* We sustain Bradley's first issue.

In her second issue, Bradley argues that the judgment adjudicating her guilt should be modified to either delete or reduce the \$945.00 reparations because the trial court did not assess reparations when it orally pronounced her sentence. The State responds that the trial court had no obligation to orally pronounce the reparations but agrees that we should modify the judgment to reduce the reparations by \$215.00, the same amount that was designated "DUE TO CSCD." We agree with the State.

We have previously held that when reparations are comparable to fees, and are therefore not punishment and not part of a defendant's sentence, reparations do not have to be included in the trial court's oral pronouncement of sentence to be properly included in the written judgment. See *Brown v. State*, No. 02-08-00063-CR, 2009 WL 1905231, at *2 (Tex. App.—Fort Worth July 2, 2009, no pet.) (mem. op., not designated for publication). However, on several prior occasions, we have struck reparations when a balance sheet described them only as "Due to CSCD" because we were unable to determine the authority for the imposition. See *Smith v. State*, Nos. 02-16-00412-CR, 02-16-00413-CR, 2017 WL 2276751, at *2–3 (Tex. App.—Fort Worth May 25, 2017, pet. ref'd) (mem. op., not designated for publication); *Sanchez v. State*, No. 02-15-00215-

²At the State's request, we also delete the \$381.94 fine from the order to withdraw funds from Bradley's inmate trust account.

CR, 2016 WL 7405798, at *4 (Tex. App.—Fort Worth Dec. 22, 2016, no pet.) (mem. op., not designated for publication); *Boyd v. State*, No. 02-11-00035-CR, 2012 WL 1345751, at *2 (Tex. App.—Fort Worth Apr. 19, 2012, no pet.) (mem. op., not designated for publication).

Here, a balance sheet contained in the clerk’s record confirms that of the \$945.00 in total reparations owed by Bradley, \$730.00 are for “PROBATION FEES” and \$215.00 are “DUE TO CSCD.” Consistent with our precedent above, we will modify the judgment adjudicating Bradley’s guilt to reduce the amount of reparations owed by Bradley by \$215.00 for a total of \$730.00.³ We overrule in part and sustain in part her second issue.

Having sustained Bradley’s first issue, we modify the judgment adjudicating her guilt to delete the \$381.94 fine. Having sustained part of Bradley’s second issue, we modify the judgment adjudicating her guilt to reflect that she owes reparations in the total amount of \$730.00. We affirm the trial court’s judgment adjudicating her guilt as modified. See Tex. R. App. P. 43.2(b).

/s/ Bill Meier
BILL MEIER
JUSTICE

³At the State’s request, we also reduce the order to withdraw funds from Bradley’s inmate trust account by \$215.00.

PANEL: WALKER, MEIER, and GABRIEL, JJ.

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

DELIVERED: November 30, 2017