



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-19-00430-CR

XAVIER MEDRANO, Appellant

v.

THE STATE OF TEXAS

On Appeal from the 371st District Court
Tarrant County, Texas
Trial Court No. 1530020D

Before Sudderth, C.J.; Gabriel and Wallach, JJ.
Memorandum Opinion by Justice Gabriel

MEMORANDUM OPINION

Appellant Xavier Medrano appeals the trial court's judgment adjudicating his guilt for the offense of tampering with physical evidence with the intent to impair an investigation. *See* Tex. Penal Code Ann. § 37.09(c). He raises four points on appeal complaining of the trial court's imposition of a fine, reparations, and court costs. We will sustain two of Medrano's points in full and one of his points in part, and we will affirm the trial court's judgment as modified.

I. BACKGROUND

Pursuant to a plea agreement, Medrano pled guilty to the offense of tampering with physical evidence with the intent to impair an investigation. In accordance with the plea agreement, the trial court placed Medrano on deferred adjudication community supervision for a period of two years. The trial court also ordered Medrano to pay a \$200 fine. The State later filed a petition to proceed with adjudication, alleging that Medrano had committed three violations of the terms of his community supervision. Following a hearing, the trial court found two of the allegations to be true, adjudicated Medrano guilty, and sentenced him to eight years' confinement. The trial court's judgment included \$314 in court costs, \$135 as reparations, and a \$42.99 fine.

II. MEDRANO'S COMPLAINT REGARDING THE FINE

In his first point, Medrano argues that the \$42.99 fine assessed in the judgment adjudicating guilt was not pronounced orally and must be deleted. The State agrees and so do we.

When an accused receives deferred adjudication, no sentence is imposed. *Taylor v. State*, 131 S.W.3d 497, 502 (Tex. Crim. App. 2004); *Alexander v. State*, 301 S.W.3d 361, 363 (Tex. App.—Fort Worth 2009, no pet.). And when a trial court adjudicates guilt, its new order sets aside the previous order deferring adjudication, including any previously imposed fine. *Taylor*, 131 S.W.3d at 502; *Alexander*, 301 S.W.3d at 363. A trial court's pronouncement of sentence is oral, while the judgment, including the sentence assessed, is just the written declaration and embodiment of that oral pronouncement. *Taylor*, 131 S.W.3d at 500; *Alexander*, 301 S.W.3d at 363. When the judgment and oral pronouncement conflict, the oral pronouncement controls. *Taylor*, 131 S.W.3d at 500; *Alexander*, 301 S.W.3d at 363.

Here, the trial court did not orally pronounce a fine when sentencing Medrano, but it included a \$42.99 fine within its judgment. We thus sustain Medrano's first point. An appellate court has the authority to modify a judgment to make it speak the truth. *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992); *Church v. State*, No. 02-17-00049-CR, 2018 WL 4183076, at *2 (Tex. App.—Fort Worth Aug. 31, 2018, no pet.) (mem. op., not designated for publication). Consistent with that authority, we modify the judgment and the incorporated order to withdraw funds to

delete the \$42.99 fine. *See Gray v. State*, No. 02-18-00142-CR, 2019 WL 983743, at *1 (Tex. App.—Fort Worth Feb. 28, 2019, no pet.) (mem. op., not designated for publication) (deleting fine from judgment and order to withdraw funds and affirming judgment as modified); *Mitchell v. State*, No. 02-17-00112-CR, 2017 WL 6759032, at *1 (Tex. App.—Fort Worth Dec. 28, 2017, no pet.) (mem. op., not designated for publication) (same).

III. MEDRANO'S COMPLAINTS REGARDING REPARATIONS

In his second point, Medrano argues that the trial court violated his right to due process when it imposed probation fees and fees “Due to CSCD” as reparations in the judgment. Medrano also complains that the reparations assessed are not supported by the record.

The trial court’s judgment required Medrano to pay \$135 as reparations. The record contains a “Revocation Restitution / Reparation Balance Sheet” from Tarrant County’s community supervision and corrections department (CSCD) stating that the \$135 of reparations is derived from \$120 of probation fees and \$15 of fees “Due to CSCD.” With respect to the \$120 of probation fees, we have previously held that a record is sufficient to support a requirement to pay owed probation fees as reparations when it contains—as it does here—an uncontradicted CSCD balance sheet showing the arrearage. *See Smith v. State*, Nos. 02-16-00412-CR, 02-16-00413-CR, 2017 WL 2276751, at *3 (Tex. App.—Fort Worth May 25, 2017, pet. ref’d) (mem. op., not designated for publication); *see also Hongpathoum v. State*, 578 S.W.3d

213, 217 (Tex. App.—Fort Worth 2019, no pet.) (holding that record supported assessment of reparations where CSCD’s balance sheet showed that appellant was in arrears on his probation fees). Further, we have repeatedly rejected arguments identical to the due-process argument made by Medrano here that probation fees may not be assessed as reparations. *See, e.g., Maxion v. State*, No. 02-18-00176-CR, 2019 WL 3269324, at *2 (Tex. App.—Fort Worth July 18, 2019, pet. ref’d) (mem. op. on en banc reconsideration, not designated for publication); *Zamarripa v. State*, 506 S.W.3d 715, 716 (Tex. App.—Fort Worth 2016, pet. ref’d). Accordingly, we overrule the portion of Medrano’s second point relating to the \$120 of probation fees assessed as reparations.

With respect to the \$15 of fees “Due to CSCD” that were assessed as reparations, Medrano cites our prior decision in *Lewis v. State*, in which we struck reparations based on amounts “Due to CSCD” because the record was not clear where the amounts came from. 423 S.W.3d 451, 461 (Tex. App.—Fort Worth 2013, pet. ref’d). Since *Lewis*, we have on numerous occasions struck fees “Due to CSCD” because we were unable to determine what “Due to CSCD” related to or what the authority was for the fees assessed. *See, e.g., Lyle v. State*, No. 02-17-00227-CR, 2019 WL 3024480, at *3 (Tex. App.—Fort Worth July 11, 2019, pet. ref’d) (mem. op., not designated for publication); *Demerson v. State*, No. 02-18-00003-CR, 2018 WL 3580893, at *3 (Tex. App.—Fort Worth July 26, 2018, no pet.) (mem. op., not designated for publication); *Smith*, 2017 WL 2276751, at *3; *Sanchez v. State*, No. 02-

15-00215-CR, 2016 WL 7405798, at *4 (Tex. App.—Fort Worth Dec. 22, 2016, no pet.) (mem. op., not designated for publication).

Here, we likewise cannot discern from the record what the \$15 “Due to CSCD” fees relate to or what the authority is for those unspecified fees. While the State mentions in its brief that a \$50 crime stoppers fee is “*a basis*” for the \$15 “Due to CSCD,” there is nothing in the record to indicate that it is *the basis* for the fees, and we are simply left to speculate what “Due to CSCD” represents. *See Lyle*, 2019 WL 3024480, at *3 (“But the \$50 categorized as ‘DUE TO CSCD’ on the balance sheet has no further identifying information allowing us to specifically trace this amount to either a statutorily authorized cost or to a community-supervision condition without impermissible speculation.”); *Demerson*, 2018 WL 3580893, at *3 (“The State’s arguments in favor of the amount due to CSCD are founded mainly on probabilities and assumptions as to the bases on which the \$344 could have been assessed.”); *Lewis*, 423 S.W.3d at 460 (“But the State appears to be guessing . . . where the State writes, ‘This fee is *presumably* the \$20 crime stopper fee Appellant was ordered to pay as a condition of probation.’”) (emphasis in original). We therefore sustain the portion of Medrano’s second point relating to the \$15 “Due to CSCD” fees, and we modify the judgment and the order to withdraw funds to subtract \$15 from the amount assessed as reparations.

IV. MEDRANO’S COMPLAINT REGARDING THE TIME PAYMENT FEE

In his third point, Medrano argues that the \$25 time payment fee assessed against him as a court cost is facially unconstitutional. The authority for assessing the time payment fee is contained in Section 133.103 of the Local Government Code.¹ Section 133.103(a)(2) provides that a person convicted of a felony must pay a fee of \$25 if he “pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution.” As we have recently observed, “[u]nder the language of this provision, the \$25 late-payment fee can be assessed only if the convicted party pays any part of the fines, court costs, or restitution assessed against him more than thirty days *after* the trial court entered the judgment.” *Tinajero v. State*, No. 02-19-00040-CR, 2019 WL 5460675, at *2 (Tex. App.—Fort Worth Oct. 24, 2019, no pet.) (mem. op., not designated for publication) (emphasis in original) (citing Tex. Loc. Gov’t Code Ann. § 133.103(a)).

¹We note that the Texas Legislature passed legislation, effective January 1, 2020, that transfers Section 133.103 to Texas Code of Criminal Procedure Article 102.030 and revises the statute to provide that all of the fees collected under the section are “to be used for the purpose of improving the collection of outstanding court costs, fines, reimbursement fees, or restitution or improving the efficiency of the administration of justice in the county or municipality.” *See* Act of May 23, 2019, 86th Leg., R.S., S.B. 346, § 2.54, 2019 Tex. Sess. Law Serv. Ch. 1352. The changes apply only to a cost, fee, or fine assessed on a conviction for an offense committed on or after the effective date of the Act. *Id.* § 5.01. Because the offense in this case was committed before January 1, 2020, the former law applies. *Id.*

Here, the trial court included the \$25 time payment fee *in the judgment it entered* “before the condition triggering the assessment of the [time payment fee]—late payment—could have occurred.” *Id.*; *Prescott v. State*, No. 02-17-00158-CR, 2019 WL 2635559, at *5 (Tex. App.—Fort Worth June 27, 2019, no pet.) (mem. op., not designated for publication). The record therefore does not support the assessment of the \$25 time payment fee assessed against Medrano. Accordingly, we sustain his third point to the extent that we modify the trial court’s judgment, the order to withdraw funds, and the bill of costs to delete this fee.² *See Tinajero*, 2019 WL 5460675, at *2 (modifying judgment, order to withdraw funds, and bill of costs to delete time payment fee); *Prescott*, 2019 WL 2635559, at *5 (modifying judgment to delete time payment fee). Because we may not determine the constitutionality of a statute unless that determination is absolutely necessary to decide the case, *see Salinas v. State*, 464 S.W.3d 363, 366 (Tex. Crim. App. 2015), we do not reach Medrano’s constitutionality argument. *See Prescott*, 2019 WL 2635559, at *5 (declining to reach appellant’s argument that the time payment fee is facially unconstitutional after modifying judgment to delete time payment fee); *see also* Tex. R. App. P. 47.1.

²In its brief, the State acknowledges that the time payment fee should be deleted because it was assessed prematurely.

V. MEDRANO'S COMPLAINT REGARDING LACK OF CREDIT FOR PRIOR PAYMENTS

In his fourth point, Medrano argues that the trial court failed to credit him with payments he made during the course of his community supervision towards his court costs. Medrano points to a printout from the district clerk's office titled "All Transactions for a Case" that contains three entries stating "Court Cost (Paid)." One of those entries reflects that \$0.01 was paid in April 2019, another entry reflects that \$113 was paid in July 2019, and a third entry reflects that \$44 was paid in September 2019, for a total of \$157.01. While the printout states "Court Cost (Paid)" with respect to those payments, the record further reflects that those payments were applied to the \$200 fine assessed when Medrano was placed on deferred adjudication.³ As pointed out by the State, the fact that the trial court later assessed a fine of \$42.99—the amount of the original \$200 fine less payment of \$157.01—gives further support to the fact that Medrano's payments were not ignored, but simply applied to his fine. Based on this record, we cannot say that the trial court failed to credit Medrano with payments he made during community supervision. We thus overrule Medrano's fourth point.

³The record contains a "List of Fee Breakdowns" reflecting that \$157.01 was paid toward the \$200 fine and that \$42.99 remained.

VI. CONCLUSION

Having overruled Medrano’s fourth point and the portion of his second point regarding the \$120 of probation fees assessed as reparations, and having sustained his first and third points and the portion of his second point regarding the \$15 of fees “Due to CSCD,” we modify the trial court’s judgment and the order to withdraw funds to delete the \$42.99 fine, we modify the trial court’s judgment and the order to withdraw funds to subtract \$15 from the amount assessed as reparations, and we modify the trial court’s judgment, the order to withdraw funds, and the bill of costs to delete the \$25 time payment fee. We affirm the trial court’s judgment as modified.

/s/ Lee Gabriel

Lee Gabriel
Justice

Do Not Publish
Tex. R. App. P. 47.2(b)

Delivered: May 28, 2020