



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

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No. 02-23-00089-CR

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JAMES ANDREA PHAYAR ABURU, Appellant

v.

THE STATE OF TEXAS

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On Appeal from the 372nd District Court  
Tarrant County, Texas  
Trial Court No. 1606182D

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Before Kerr, Bassel, and Walker, JJ.  
Memorandum Opinion by Justice Walker

## MEMORANDUM OPINION

A jury convicted Appellant James Andrea Phayar Aburu of two counts of aggravated sexual assault of a child and one count of indecency with a child by contact. The jury assessed his punishment at 60 years' confinement on each of the sexual-assault counts and 20 years' confinement on the indecency count, but it did not assess any fines. The trial court orally sentenced Aburu in accordance with the jury's assessment and ordered that the terms of confinement be served consecutively. No fine was assessed in open court. However, the written judgment for count one includes a \$100 fine, which is also reflected in the order to withdraw funds from Aburu's inmate trust account.<sup>1</sup> In two issues, Aburu argues that the \$100 fine was improperly assessed against him and that we should delete it from both the written judgment on count one and the order to withdraw funds. The State agrees with Aburu and so do we.

A defendant's sentence, which includes any fine imposed, must be pronounced orally in his presence. *Taylor v. State*, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004); *Lewis v. State*, 423 S.W.3d 451, 459 (Tex. App.—Fort Worth 2013, pet. ref'd). “When there is a conflict between the oral pronouncement of sentence and the sentence in the written judgment, the oral pronouncement controls.” *Taylor*, 131 S.W.3d at 500.

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<sup>1</sup>The written judgment for count one assessed a \$100 fine, \$290 in court costs, and \$55 in reimbursement fees, for a total of \$445. The order to withdraw funds directs that \$445 be withdrawn from Aburu's inmate account. The district clerk's bill of cost, however, reflects that only \$345 had been assessed against Aburu.

Because a fine was not assessed by the jury or orally pronounced by the trial court, we sustain both of Aburu's issues. We modify both the judgment in count one and the order to withdraw funds to delete the \$100 fine, and we affirm the judgment of the trial court as modified.

/s/ Brian Walker

Brian Walker  
Justice

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Tex. R. App. P. 47.2(b)

Delivered: December 14, 2023