



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-16-00073-CR

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**JIMMY ZAVALA, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the 137th District Court  
Lubbock County, Texas  
Trial Court No. 2012-433,926; Honorable John J. McClendon III, Presiding

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August 11, 2016

**ABATEMENT AND REMAND**

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

In April 2012, pursuant to a plea bargain, Appellant, Jimmy Zavala, was convicted of evading arrest or detention with a vehicle,<sup>1</sup> for an offense allegedly committed on January 22, 2012. Appellant was assessed a two-year sentence, suspended in favor of three years community supervision. On April 28, 2015, Appellant's community supervision was revoked and he gave timely notice of appeal.

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<sup>1</sup> TEX. PENAL CODE ANN. § 38.04 (West Supp. 2015).

In reviewing Appellant's brief, it has come to this court's attention that the trial court's original judgment and judgment revoking community supervision reflect that Appellant was convicted of a state jail felony. Effective September 1, 2011, the Legislature amended section 38.04(b) of the Texas Penal Code to elevate evading arrest or detention with a vehicle to a third degree felony.<sup>2</sup> See *Rodriguez v. State*, No. 07-14-00407-CR, \_\_\_ S.W.3d \_\_\_ (Tex. App.—Amarillo August 8, 2016, no pet. h.). Accordingly, we now abate this appeal and remand the cause to the trial court to correct both judgments to reflect a third degree felony in the summary portion under Degree of Offense and to delete "State Jail Facility" from the referenced punishment.

The trial court clerk is directed to file the corrected judgments in a supplemental clerk's record on or before August 25, 2016. Appellant shall have 30 days following the filing of the supplemental clerk's record to file an amended brief, should he elect to do so. If a supplemental brief is not filed, for purposes of calculating the deadline for filing the State's brief in accordance with Rule 38.6 of the Texas Rules of Appellate Procedure, Appellant's current brief will be deemed as having been filed on the filing deadline for Appellant's supplemental brief.

It is so ordered.

Per Curiam

Do not publish.

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<sup>2</sup> Section 38.04(b) of the Penal Code was amended three times in the span of four days in May 2011. See Act of May 23, 2011, 82nd Leg., R.S., ch. 391, § 1, 2011 Tex. Gen. Laws 1046; Act of May 24, 2011, 82nd Leg., R.S., ch. 839, § 4, 2011 Tex. Gen. Laws 2110, 2111; Act of May 27, 2011, 82nd Leg., R.S. ch. 920, § 3, 2011 Tex. Gen. Laws 2321, 2322.