



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

No. 07-21-00261-CR
No. 07-21-00262-CR

DENNIS JAMES HENLEY, APPELLANT

V.

STATE OF TEXAS, APPELLEE

On Appeal from the 320th District Court of
Potter County, Texas
Trial Court Nos. 079471-D-CR, 078886-D-CR, Honorable Pamela Sirmon, Presiding

April 25, 2022

MEMORANDUM OPINION

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

Dennis James Henley, appellant, appeals the trial court's judgments convicting him of possession of a controlled substance (trial court cause number 079471-D-CR) and possession of a controlled substance with the intent to deliver (trial court cause number 078886-D-CR). Pursuant to a plea bargain, appellant pleaded guilty to said offenses and pleaded true to the attendant enhancement allegations. In exchange, appellant was sentenced to ten years' imprisonment in trial court cause number 079471-D-CR and

twenty-five years' imprisonment in trial court cause number 078886-D-CR. Also pursuant to the plea bargain, charges alleging theft were dismissed in cause number 079055-D-CR. Following a hearing on appellant's motion for new trial in which he advanced allegations of ineffective assistance of counsel and sought permission to appeal, the trial court granted appellant limited permission to appeal only issues relating to the enhancement allegations. Appellant's motion for new trial was denied. Appellant filed his appeals.

Appellant's counsel filed a motion to withdraw together with an *Anders* brief.¹ Through those documents, he certifies to the Court that, after diligently searching the record, the appeal is without merit. Accompanying the brief and motion is a copy of a letter sent by counsel to appellant informing the latter of counsel's belief that there is no reversible error and of appellant's right to file a response, pro se, to counsel's motion to withdraw and *Anders* brief. So too did counsel provide appellant with a copy of the appellate record. By letter dated March 11, 2022, this Court notified appellant of his right to file his own brief or response by April 11, 2022, if he wished to do so. To date, appellant has not filed a response.

In compliance with the principles enunciated in *Anders*, appellate counsel discussed potential areas for appeal. Counsel specifically addressed what appeared to be appellant's main complaint and the topic to which the trial court's permission to appeal extended: the enhancement allegations. Counsel observed that no objection was lodged before the trial court and that appellant pleaded true to all enhancement allegations and ultimately concludes that the subject raises no reversible error.

¹ See *Anders v. California*, 386 U.S. 738, 744–45, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

We conducted our own review of the record to assess the accuracy of counsel's conclusions and to uncover arguable error pursuant to *In re Schulman*, 252 S.W.3d 403, 406 (Tex. Crim. App. 2008), and *Stafford v. State*, 813 S.W.2d 503, 508 (Tex. Crim. App. 1991) (en banc). We found no issues of arguable merit.

However, we do observe that there is a matter in the bills of costs that we have the authority to correct. In the bill of costs for each cause, a time payment fee of \$15.00 has been assessed. Imposition of said fine has been declared premature, as the pendency of an appeal stops the clock for purposes of the time payment fee. See *Dulin v. State*, 620 S.W.3d 129, 133 (Tex. Crim. App. 2021). This Court has the authority to modify an incorrect judgment when we have the necessary information to do so. See TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993) (en banc). Accordingly, we modify the judgments and bills of costs associated with both trial court cause numbers 079471-D-CR and 078886-D-CR to delete the assessment of the \$15.00 time payment fee in its entirety, without prejudice to such fee being assessed at a later date if, after more than thirty days after the issuance of appellate mandate, appellant has failed to pay in full any fine, court costs, or restitution that he owes. See *Dulin*, 620 S.W.3d at 133.

Accordingly, counsel's motions to withdraw are granted, and the judgments, as herein modified, are affirmed.²

Per Curiam

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² Appellant has the right to file a petition for discretionary review with the Texas Court of Criminal Appeals.