



**In The  
Court of Appeals  
Sixth Appellate District of Texas at Texarkana**

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No. 06-21-00009-CR

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DANNY GENE PRATER, Appellant

V.

THE STATE OF TEXAS, Appellee

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On Appeal from the 336th District Court  
Fannin County, Texas  
Trial Court No. CR-15-25365

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Before Morriss, C.J., Burgess and Stevens, JJ.  
Memorandum Opinion by Chief Justice Morriss

## MEMORANDUM OPINION

In early 2021, the trial court adjudicated Danny Gene Prater's guilt in each of three cases<sup>1</sup> and sentenced Prater to fifty years' imprisonment, with the sentences to run concurrently.

The judgment appealed in this case was for burglary of a habitation and assessed Prater \$364.00 in court costs.<sup>2</sup> On appeal, Prater challenges the sufficiency of evidence supporting the assessment of court costs. Because we find that there is a basis in the record for the court costs assessed, we affirm the trial court's judgment.

The original order of deferred adjudication also ordered Prater to pay a \$2,000.00 fine and court costs of \$294.00. Prater did not appeal that order.<sup>3</sup> Prater, however, does appeal the judgment adjudicating his guilt and assessing court costs of \$364.00 and any remaining restitution. A certified bill of costs listed "Court Costs" of \$249.00 and "Sheriff's Fees" of \$115.00, for a total of \$364.00.

Prater's appellate argument complains that there is insufficient evidence to support the assessment of court costs because the certified bill of costs does not list the particular costs

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<sup>1</sup>In late 2016, in a single proceeding, Prater had (1) pled guilty to two counts of burglary of a habitation and one count of evading arrest or detention with a vehicle and (2) pled true to two prior felony convictions as alleged in each of the indictments. *See* TEX. PENAL CODE ANN. §§ 12.42(d), 30.02(c)(2), 38.04(b)(2)(A). The trial court had deferred adjudication of guilt in each of the cases, had found the enhancement allegations true, and had placed Prater on ten years' community supervision.

<sup>2</sup>Prater also appeals a second conviction of burglary of a habitation in our cause number 06-21-00010-CR, and one count of evading arrest or detention with a vehicle in our cause number 06-21-00011-CR. Prater filed a single, consolidated brief in all three appeals. This opinion addresses Prater's issue related to this conviction.

<sup>3</sup>As part of his plea bargain, Prater waived his right to appeal this order, and the trial court certified that, because of his plea bargain and his waiver, Prater did not have a right to appeal.

included in the \$249.00 of court costs and does not list the services performed by the sheriff that were included in the \$115.00 charged for sheriff's fees.<sup>4</sup>

“[W]e review the assessment of court costs on appeal to determine if there is a basis for the cost, not to determine if there was sufficient evidence offered at trial to prove each cost.” *Johnson v. State*, 423 S.W.3d 385, 390 (Tex. Crim. App. 2014). Any complaints about the assessment of court costs, or the specific amounts of those costs, contained in an order of deferred adjudication must be made in a timely appeal of that order. *Perez v. State*, 424 S.W.3d 81, 85–86 (Tex. Crim. App. 2014). If the defendant has knowledge of the assessed court costs and fails to timely appeal the order of deferred adjudication, he, in a subsequent appeal of the judgment adjudicating his guilt, forfeits his right to complain about the costs assessed in the order. *Id.* at 86; *see Riles v. State*, 452 S.W.3d 333, 337 (Tex. Crim. App. 2015); *Wiley v. State*, 410 S.W.3d 313, 318 (Tex. Crim. App. 2013).

The record in this case shows that Prater's right thumb print was embossed on the order of deferred adjudication. In addition, the order establishing Prater's conditions of community supervision, also acknowledged by Prater with his signature, provided that he would pay \$294.00 in court costs as a term of his community supervision. Under this record, we conclude that Prater was aware that he was required to pay those court costs. *See Wiley*, 410 S.W.3d at 320–

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<sup>4</sup>In response to our request, the district clerk supplemented the record with an itemized, certified bill of costs and sheriff's returns for four subpoenas served on witnesses. However, the itemized bill of costs contains contradictory information regarding how the clerk calculated the costs to arrive at a total of \$364.00. There is an indication in the bill of costs that would support a conclusion that the clerk added \$70.00 in sheriff's fees to the \$294.00 in court costs assessed in the order of deferred adjudication to arrive at the \$364.00 total. There is also an indication that the clerk added \$115.00 in sheriff's fees to \$249.00 in new court costs to reach the \$364.00 total. Nevertheless, because there is other evidence in the record that provides a basis for the court costs assessed in the judgment adjudicating guilt, we need not rely on the clerk's bill of costs.

21. Since he failed to timely appeal the deferred adjudication order,<sup>5</sup> any complaint regarding the \$294.00 in court costs assessed in that order has been forfeited. *See Riles*, 452 S.W.3d at 338; *Wiley*, 410 S.W.3d at 321.

Prater timely appealed the assessment of \$364.00 in court costs contained in the judgment of adjudication. However, he has forfeited his right to complain about \$294.00 of those court costs.<sup>6</sup> *Perez*, 424 S.W.3d at 86. Consequently, we find that there is a basis in the record that supports \$294.00 in court costs assessed in the judgment of adjudication.

Because Prater has forfeited his complaint as to \$294.00 of the \$364.00 in court costs assessed in the judgment of adjudication, this appeal properly challenges only the \$70.00 of court costs that were added at the time of the adjudication of his guilt. *See id.* The record shows that these were sheriff's fees incurred after Prater was placed on deferred adjudication community supervision.

Legitimate charges for sheriff's fees include "\$50 for executing or processing an issued arrest warrant, capias, or capias pro fine" and "\$5 for summoning a witness." TEX. CODE CRIM. PROC. ANN. art. 102.011(a)(2)–(3). The record in this case shows that a capias for Prater's arrest was issued on February 7, 2017, and that the sheriff executed that capias on June 23, 2018. Under Article 102.011(a), Prater was obligated to pay \$50.00 for this capias executed by the sheriff. *See* TEX. CODE CRIM. PROC. ANN. art. 102.011(a)(2). In addition, the record shows that

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<sup>5</sup>Prater's waiver of his right to appeal the order of deferred adjudication "does not excuse his failure to appeal the assessment of court costs at the time of the original imposition of community supervision." *Perez*, 424 S.W.3d at 85–86.

<sup>6</sup>Testimony at the hearing on the State's motion to adjudicate showed that Prater had not paid any of those court costs during his community supervision.

the sheriff served four subpoenas summoning witnesses on July 1, 2020, July 4, 2020, January 12, 2021, and January 14, 2021. Under Article 102.011(a), Prater was obligated in the amount of \$5.00 each for the four subpoenas served by the sheriff, for a total of \$20.00. Therefore, we find that there is a basis in the record for the \$70.00 sheriff's fees included in the court costs assessed by the trial court.

Because there is a basis in the record for the court costs assessed by the trial court in the judgment adjudicating guilt, we overrule Prater's issue.<sup>7</sup>

For the reasons stated, we affirm the trial court's judgment.

Josh R. Morriss, III  
Chief Justice

Date Submitted: August 30, 2021  
Date Decided: October 7, 2021

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<sup>7</sup>In his brief, Prater also complains that there is no support in the record for imposing restitution and requests that we reform the judgment to remove any reference to the payment of restitution. At Prater's sentencing, the trial court stated, "There'll be court costs and any remaining restitution, if he's not yet paid them." Nevertheless, neither the written judgment of adjudication nor the certified bill of costs shows any amount assessed for restitution. For that reason, we find that this issue is without merit.