



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

No. 06-21-00015-CR

RYAN DELFIERRO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 188th District Court
Gregg County, Texas
Trial Court No. 45,149-A

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

MEMORANDUM OPINION

Having pled guilty in 2016 to intoxication assault,¹ Ryan Delfierro was serving six years of community supervision. In 2021, the trial court held a revocation hearing, during which Delfierro pled true to the State's two allegations, that is, use of alcohol and failure to make all specified payments. After hearing testimony, the trial court revoked Delfierro's community supervision and sentenced him to five years' confinement. Delfierro appeals that conviction and sentence.

Delfierro's appellate counsel filed a brief that outlined the procedural history of the case, provided a detailed summary of the evidence elicited during the trial court proceedings, and stated that counsel found no meritorious issues to raise on appeal. As counsel has provided a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced, he has met the requirements of *Anders v. California*. See *Anders v. California*, 386 U.S. 738, 743–44 (1967); *In re Schulman*, 252 S.W.3d 403, 406 (Tex. Crim. App. 2008) (orig. proceeding); *Stafford v. State*, 813 S.W.2d 503, 509–10 (Tex. Crim. App. 1991); *High v. State*, 573 S.W.2d 807, 812–13 (Tex. Crim. App. [Panel Op.] 1978).

Delfierro's counsel filed a motion with this Court seeking to withdraw as counsel in this appeal and provided Delfierro with a copy of the brief and the motion to withdraw. His counsel also sent Delfierro the clerk's and reporter's records and informed Delfierro of his rights to review the record and file a pro se response. On July 6, 2021, this Court notified Delfierro that, if he wished to file a pro se response to his counsel's *Anders* brief, any such response was due on

¹See TEX. PENAL CODE ANN. § 49.07.

or before August 5, 2021. We received neither a response nor request for an extension of the deadline for filing such response from Delfierro. On August 17, 2021, this Court informed Delfierro that the case was set for submission on September 7, 2021.

We have reviewed the entire appellate record and have independently determined that no reversible error exists. *See Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005). However, we note that the trial court’s judgment includes an assessment of \$943.50 in appointed-attorney fees; yet, Delfierro was indigent at trial.² “This Court has the power to correct and modify the judgment of the trial court for accuracy when the necessary data and information are part of the record.” *Anthony v. State*, 531 S.W.3d 739, 743 (Tex. App.—Texarkana 2016, no pet.) (citing TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref’d)). “The authority of an appellate court to reform incorrect judgments is not dependent upon the request of any party, nor does it turn on the question of whether a party has or has not objected in the trial court.” *Id.* (quoting *Asberry*, 813 S.W.2d at 529–30).

²Under Article 26.05(g) of the Texas Code of Criminal Procedure, a trial court has the authority to order the reimbursement of court-appointed attorney fees only if “the judge determines that a defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided . . . , including any expenses and costs.” TEX. CODE CRIM. PROC. ANN. art. 26.05(g) (Supp.). “[T]he defendant’s financial resources and ability to pay are explicit critical elements in the trial court’s determination of the propriety of ordering reimbursement of costs and fees” of legal services provided. *Armstrong v. State*, 340 S.W.3d 759, 765–66 (Tex. Crim. App. 2011) (alteration in original) (quoting *Mayer v. State*, 309 S.W.3d 552, 556 (Tex. Crim. App. 2010)). Since there is no finding of the ability of Delfierro to pay them, the assessment of the attorney fees was erroneous. *See Cates v. State*, 402 S.W.3d 250, 252 (Tex. Crim. App. 2013); *see also Mayer v. State*, 309 S.W.3d 552 (Tex. Crim. App. 2010); *Martin v. State*, 405 S.W.3d 944, 946–47 (Tex. App.—Texarkana 2013, no pet.).

Accordingly, we modify the trial court's judgment by deleting the assessment of \$943.50 for attorney fees from the judgment. We affirm the judgment of the trial court, as modified.³

Josh R. Morriss, III
Chief Justice

Date Submitted: September 7, 2021
Date Decided: October 14, 2021

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³Since we agree that this case presents no reversible error, we also, in accordance with *Anders*, grant counsel's request to withdraw from further representation of Appellant in this case. *See Anders*, 386 U.S. at 744. No substitute counsel will be appointed. Should Appellant desire to seek further review of this case by the Texas Court of Criminal Appeals, Appellant must either retain an attorney to file a petition for discretionary review or file a pro se petition for discretionary review. Any petition for discretionary review (1) must be filed within thirty days from either the date of this opinion or the date on which the last timely motion for rehearing was overruled by this Court, *see* TEX. R. APP. P. 68.2, (2) must be filed with the clerk of the Texas Court of Criminal Appeals, *see* TEX. R. APP. P. 68.3, and (3) should comply with the requirements of Rule 68.4 of the Texas Rules of Appellate Procedure, *see* TEX. R. APP. P. 68.4.