



NUMBER 13-16-00407-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

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JANETTA CONSUELA RIVERS,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

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On appeal from the 264th District Court  
of Bell County, Texas.

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## MEMORANDUM OPINION

**Before Justices Rodriguez, Contreras, Benavides  
Memorandum Opinion by Justice Contreras**

By two issues, appellant Janetta Consuela Rivers contends: (1) the trial court erred in assessing court costs against her because she is indigent; and (2) the statutes authorizing the assessment of court costs against indigent criminal defendants are unconstitutional as applied to her and violate her right to equal protection. We affirm.

## I. BACKGROUND<sup>1</sup>

Without a plea bargain agreement, Rivers pleaded guilty to fraudulent possession of fifty or more items of identifying information, a first-degree felony offense. See TEX. PENAL CODE ANN. § 32.51(b), (c)(4) (West, Westlaw through 2015 R.S.). The trial court sentenced Rivers to eleven years' imprisonment and assessed a \$1,000 fine and court costs of \$251.<sup>2</sup>

## II. ASSESSMENT OF COURT COSTS AGAINST INDIGENT DEFENDANTS

By her first issue, appellant contends that the trial court erred in assessing court costs against her because she is indigent.

Although we have not been directed to binding authority from the Texas Court of Criminal Appeals and have found none on this issue, several courts of appeals, including this Court, have held that “[a] defendant’s ability to pay is not relevant with respect to legislatively mandated court costs” and, accordingly, “a trial court can order an indigent defendant to pay legislatively mandated court costs provided payment is not demanded before the trial court proceedings have concluded.” *Allen v. State*, 426 S.W.3d 253, 258–59 (Tex. App.—Texarkana 2013, no pet.); *Martin v. State*, 405 S.W.3d 944, 947 (Tex. App.—Texarkana 2013, no pet.); *Owen v. State*, 352 S.W.3d 542, 546 (Tex. App.—Amarillo 2011, no pet.); *Williams v. State*, 332 S.W.3d 694, 700 (Tex. App.—Amarillo 2011, pet. denied); see also *Stroud v. State*, No. 09-14-00439-CR, 2016 WL 3136148, at \*6 (Tex. App.—Beaumont June 1, 2016, no pet.) (mem. op., not designated for

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<sup>1</sup> This case is before this Court on transfer from the Third Court of Appeals in Austin pursuant to an order issued by the Texas Supreme Court. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2015 R.S.).

<sup>2</sup> Appellant asserts that the amount assessed is \$276, which includes the \$251 in “basic court costs” plus a \$25 “late payment fee.”

publication); *Tanton v. State*, No. 13-11-00631-CR, 2012 WL 3536998, at \*2 (Tex. App.—Corpus Christi Aug. 16, 2012, no pet.) (mem. op., not designated for publication). More importantly, the Third Court of Appeals has agreed with those cases holding “that an indigent defendant can be assessed court costs.” *Hernandez-Prado v. State*, No. 03-15-00289-CR, 2016 WL 3144098, at \*13 (Tex. App.—Austin May 26, 2016, pet. ref’d) (mem. op., not designated for publication) (citing *Ludlow v. State*, No. 03-11-00212-CR, 2012 WL 104469, at \*1 (Tex. App.—Austin Jan. 11, 2012, no pet.) (mem. op., not designated for publication)).<sup>3</sup>

Appellant acknowledges these authorities, but argues that they “must be reconsidered” in light of the Texas Supreme Court’s decision in *Campbell v. Wilder*. 487 S.W.3d 146, 152 (Tex. 2016). Specifically, appellant cites the following statement from *Campbell*: “It is an abuse of discretion for any judge, including a family law judge, to order costs in spite of an uncontested affidavit of indigence.” See *id.* We agree with the State that *Campbell* is inapposite. *Campbell* involved the assessment of court costs against indigent civil litigants in divorce proceedings; see *id.* at 148; it has no application in the context of indigent criminal defendants. See *id.* We overrule appellant’s first issue.

### III. EQUAL PROTECTION

By her second issue, appellant argues that the statutes authorizing the assessment of court costs against indigent criminal defendants are unconstitutional as applied to her and violate her right to equal protection because court costs are not

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<sup>3</sup> See TEX. R. APP. P. 41.3 (“In cases transferred by the Supreme Court from one court of appeals to another, the court of appeals to which the case is transferred must decide the case in accordance with the precedent of the transferor court under principles of stare decisis if the transferee court’s decision otherwise would have been inconsistent with the precedent of the transferor court.”).

assessed against indigent civil parties. Appellant argues that there is “no rational basis” for requiring indigent criminal defendants to pay court costs but excusing indigent civil litigants from doing so.

The Equal Protection Clause of the Fourteenth Amendment requires that all persons similarly situated shall be treated alike under the law. See U.S. CONST. amend. XIX; *State v. Rousseau*, 396 S.W.3d 550, 557 (Tex. Crim. App. 2013) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982); *Wood v. State*, 18 S.W.3d 642, 651 (Tex. Crim. App. 2000)). Generally, to prevail on an equal protection claim, the party complaining must establish two elements: (1) the party was treated differently than other similarly situated parties, and (2) the differential treatment does not have a rational governmental basis. See *Rousseau*, 396 S.W.3d at 557 n.7 (explaining that, as here, when no suspect classification or violation of a fundamental right is involved, a difference in treatment need be only rationally related to a valid public purpose to withstand equal protection scrutiny). Under the first element, it is axiomatic that the Equal Protection Clause does not require things different in fact to be treated in law as though they were the same. *Downs v. State*, 244 S.W.3d 511, 518 (Tex. App.—Fort Worth 2007, pet. ref'd). Differences based on various factual traits, circumstantial nuances, and peculiarities, which by virtue of their differences make them amenable to disparate treatment, are not a basis for an equal protection claim. *Id.*

The Waco Court of Appeals recently rejected the same claim now made by the appellant in the present case: that the assessment of costs against indigent criminal defendants violates the equal protection clause because “no rational basis exists for treating indigent criminal defendants and indigent civil litigants differently.” *Martinez v.*

*State*, 507 S.W.3d 914, 917–18 (Tex. App.—Waco 2016, no pet.). The Waco court concluded that “indigent civil litigants and indigent criminal defendants are not similarly-situated persons.” *Id.* at 917. We agree with the reasoning and holding of *Martinez*. See *id.* at 917–18. Appellant has not established the first element of her equal protection claim. See *Rousseau*, 396 S.W.3d at 557 n.7. Accordingly, we conclude that appellant has not met her burden of showing that she was denied equal protection of the law through the assessment of court costs. We overrule appellant’s second issue.

#### **IV. CONCLUSION**

We affirm the trial court’s judgment.

DORI CONTRERAS  
Justice

Do not publish.  
TEX. R. APP. P. 47.2(b).

Delivered and filed the  
8th day of June, 2017.