



**NUMBER 13-20-00038-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**KENDRICK ANTRE CLARK CROOKS,**

**Appellant,**

**v.**

**THE STATE OF TEXAS,**

**Appellee.**

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**On appeal from the 369th District Court  
of Leon County, Texas.**

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**MEMORANDUM OPINION**

**Before Chief Justice Contreras and Justices Longoria and Perkes  
Memorandum Opinion by Chief Justice Contreras**

Appellant Kendrick Antre Clark Crooks appeals the revocation of his community supervision after pleading guilty to robbery, a second-degree felony. See TEX. PENAL CODE ANN. § 29.02. By two issues, Crooks argues (1) the trial court erred when it revoked

his community supervision without specifying the ground for revocation and (2) part of a time-payment fee assessed as a court cost was unconstitutional. We affirm as modified.

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

In July 2018, Crooks was indicted for aggravated robbery with a deadly weapon, a first-degree felony. *See id.* § 29.03. Crooks entered into a plea agreement with the State, pleaded guilty to the lesser-included offense of robbery, and the trial court placed Crooks on ten years of deferred adjudication community supervision on November 16, 2018.

On April 5, 2019, the State filed a motion to adjudicate guilt, alleging that Crooks violated the conditions of his community supervision because he committed three new criminal offenses, did not pay community supervision fees and court costs, and did not perform community service hours. On May 31, 2019, the State amended its motion to adjudicate to include additional allegations that Crooks committed a fourth criminal offense and refused to submit to two urinalyses. The State amended its motion to adjudicate again on October 30, 2019, adding allegations that Crooks failed to complete a drug offender education program, failed to complete a victim impact panel, and failed to observe his curfew. The State amended its motion one last time on November 7, 2019 to include an allegation that Crooks used marijuana while on supervision and failed to pay a urinalysis fee.

At the hearing on the State's motion to adjudicate, Crooks pleaded true to all of the allegations. The trial court accepted the pleas, found the violations to be true, adjudicated Crooks guilty of the robbery offense, and sentenced Crooks to eighteen years'

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<sup>1</sup> This case was transferred from the Tenth Court of Appeals in Waco pursuant to an order issued by the Texas Supreme Court. *See* TEX. GOV'T CODE ANN. § 73.001.

imprisonment in the Texas Department of Criminal Justice Institutional Division. This appeal followed.

## II. REVOCATION

By his first issue, Crooks argues that the trial court “erred by failing to state its findings” regarding the community supervision violations alleged by the State.

A revocation proceeding is neither a criminal nor a civil trial; rather, it is an administrative hearing. *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993); *Canseco v. State*, 199 S.W.3d 437, 438 (Tex. App.—Houston [1st Dist.] 2006, pet. ref’d). At a revocation hearing, the State must prove by a preponderance of the evidence that the defendant has violated a condition of his community supervision. *Cobb*, 851 S.W.2d at 873; *Canseco*, 199 S.W.3d at 438. Proof of a single violation is sufficient to support revocation. *Canseco*, 199 S.W.3d at 439. A plea of true, standing alone, is also sufficient to support the trial court’s judgment of revocation. *Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. 1979); *Jones v. State*, 112 S.W.3d 266, 268 (Tex. App.—Corpus Christi—Edinburg 2003, no pet.); see also *Cummins v. State*, No. 10-05-00142-CR, 2005 WL 2300355, at \*1 (Tex. App.—Waco Sept. 21, 2005, no pet.) (mem. op., not designated for publication).

The Due Process Clause of the Fourteenth Amendment imposes procedural and substantive limits on the revocation of the conditional liberty created by community supervision. *Ex parte Carmona*, 185 S.W.3d 492, 495 (Tex. Crim. App. 2006). To meet the requirements of due process, the final revocation of community supervision must be preceded by a hearing where the defendant is entitled to written notice of the claimed violations of his community supervision, disclosure of the evidence against him, an

opportunity to be heard in person and to present witnesses and documentary evidence, a neutral hearing body, and a written statement by the fact finder as to the evidence relied on and the reasons for revoking community supervision. *Id.* However, an order revoking community supervision is sufficient without a recitation of the findings and conclusions on which the factfinder acted if the appellant failed to timely request that the trial court make such findings. *King v. State*, 649 S.W.2d 42, 46 (Tex. Crim. App. 1983); *see also Pickett v. State*, No. 10-12-00214-CR, 2013 WL 6923728, at \*1 (Tex. App.—Waco Dec. 27, 2013, no pet.) (mem. op., not designated for publication).

Here, the trial court asked Crooks whether he had an opportunity to review the State's motion to adjudicate filed on November 7, 2019, and Crooks answered in the affirmative. The State's motion to adjudicate listed and detailed all the violations alleged by the State. The trial court then asked Crooks how he pleaded to the nine allegation paragraphs in the State's motion, Crooks pleaded true to all of them, and the trial court stated it accepted his pleas. Crooks, however, did not request findings from the trial court. Therefore, the trial court did not err in not stating its findings, and there was no due process violation. *See Mason v. State*, 495 S.W.2d 248, (Tex. Crim. App. 1973) ("While it would be better practice for trial courts to require orders revoking [community supervision] to specify the exact ground or grounds of the State's motion relied on by the court to revoke . . . , the failure of the trial court to make specific findings is not reversible error in the absence of a request therefor."); *see also Lindsay v. State*, No. 03-10-00817-CR, 2012 WL 3797604, at \*2 n.1 (Tex. App.—Austin Aug. 28, 2012, no pet.) (mem. op., not designated for publication) (collecting cases applying the holding in *King*).

We overrule Crooks' first issue.

### III. COURT COSTS

By his second issue, Crooks argues that § 133.103(b) and (d) of the Texas Local Government Code violate separation of power principles and are unconstitutional. Section 133.103 mandated that a person convicted of a criminal offense must pay a \$25 “time payment fee” if the person pays any part of a fine, court costs, or restitution on or after the 31st day after the judgment was entered. TEX. LOC. GOV’T CODE ANN. § 133.103(a).<sup>2</sup> Subsections (b) and (d) directed the comptroller to deposit a total of ninety percent of the fee into the general revenue fund of the county or municipality. *Id.* § 133.103(b), (d).

A defendant may challenge the court costs assessed for the first time on appeal. *See Johnson v. State*, 423 S.W.3d 385, 391 (Tex. Crim. App. 2014); *Casas v. State*, 524 S.W.3d 921, 925 (Tex. App.—Fort Worth 2017, no pet.). Challenges to the constitutionality of a statute may be either facial attacks or as-applied challenges. *Johnson v. State*, 562 S.W.3d 168, 175 (Tex. App.—Houston [14th Dist.] 2018, pet. ref’d) (op. on reh’g); *see also Pugh v. State*, No. 03-18-00027-CR, 2018 WL 4039572, at \*7 (Tex. App.—Austin Aug. 24, 2018, no pet.) (mem. op., not designated for publication). Except when First Amendment freedoms are involved, a facial challenge to a statute is a challenge to the statute in all of its applications, as opposed to a particular application. *Salinas v. State*, 523 S.W.3d 103, 106 (Tex. Crim. App. 2017).

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<sup>2</sup> Effective January 1, 2020, the Texas Legislature repealed Texas Local Government Code § 133.103 and recodified the time payment fee in the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 102.030; Act of May 23, 2019, 86th Leg., R.S., ch. 1352 (S.B. 346), §§ 2.54, 4.40(33), 2019 Tex. Sess. Laws Ch. 1352. The new statute provides that all of the fees collected under article 102.030 are “to be used for the purpose of improving the collection of outstanding court costs, fines, reimbursement fees, or restitution or improving the efficiency of the administration of justice in the county or municipality.” TEX. CODE CRIM. PROC. ANN. art. 102.030(b). The changes, however, apply only to a cost, fee, or fine assessed on a conviction for an offense committed on or after January 1, 2020. *See* Act of May 23, 2019, 86th Leg., R.S., ch. 1352 (S.B. 346), § 5.01, 2019 Tex. Sess. Laws Ch. 1352. Because the offense in this case was committed before January 1, 2020, the former law applies. *See Ovalle v. State*, 592 S.W.3d 615, 617 n.1 (Tex. App.—Dallas 2020, pet. filed).

A statute that assesses a court cost such as the one here violates the Texas Constitution if it turns the courts into “tax gatherers.” See *Salinas*, 523 S.W.3d at 106–07. Two types of fees assessed as court costs have been held to pass constitutional muster: (1) those meant to recoup costs that are necessary and incidental to a criminal trial; and (2) those that are allocated to be expended on any legitimate criminal justice purpose. *Moleire v. State*, 574 S.W.3d 21, 28–29 (Tex. App.—Houston [1st Dist.] 2018, pet. ref’d); see *Peraza*, 467 S.W.3d at 510, 517–18.

All the appellate courts, including this Court, that have considered the issue raised by appellant have concluded that § 133.103(b) and (d) are facially unconstitutional. See, e.g., *Ovalle v. State*, 592 S.W.3d 615, 617–18 (Tex. App.—Dallas 2020, pet. filed); *Simmons v. State*, 590 S.W.3d 702, 711–12 (Tex. App.—Waco 2019, pet. filed); *Dulin v. State*, 583 S.W.3d 351, 353 (Tex. App.—Austin 2019, pet. granted); *Kremplewski v. State*, \_\_\_ S.W.3d \_\_\_, \_\_\_, No. 01-19-00033-CR, 2019 WL 3720627, at \*3 (Tex. App.—Houston [1st Dist.] Aug. 8, 2019, pet. filed); *Johnson v. State*, 573 S.W.3d 328, 340 (Tex. App.—Houston [14th Dist.] 2019, pet. filed); see also *Brown v. State*, No. 06-20-00017-CR, 2020 WL 3865736, at \*3 (Tex. App.—Texarkana July 9, 2020, no pet.) (mem. op., not designated for publication); *Townsend v. State*, No. 13-18-00049-CR, 2019 WL 6205470, at \*7–8 (Tex. App.—Corpus Christi–Edinburg, Nov. 21, 2019, pet. filed) (mem. op., not designated for publication); *King v. State*, No. 11-17-00179-CR, 2019 WL 3023513, at \*1, 5–6 (Tex. App.—Eastland July 11, 2019, pet. filed) (mem. op., not designated for publication). This is because these subsections (1) do not reimburse the county or the State for expenses incurred in connection with a criminal trial specifically or criminal justice resources generally or (2) allocate the funds to be used for something that

is a legitimate criminal justice purpose. See TEX. LOC. GOV'T CODE ANN. § 133.103; *Salinas*, 523 S.W.3d at 107, 109 n.26; *Johnson*, 573 S.W.3d at 340; see also *Townsend*, 2019 WL 6205470, at \*7–8. Rather, subsections (b) and (d) direct ninety percent of the time payment fee to the general revenue fund and there is no statutory directive that the funds be used for a legitimate criminal justice purpose. See *Salinas*, 523 S.W.3d at 109-10; *Johnson*, 573 S.W.3d at 340; see also *Townsend*, 2019 WL 6205470 at \*8.

Finally, we note that the remaining \$2.50 of the \$25 was constitutionally collected under § 133.103(c) because the statute mandated that 10% of the time payment fee was deposited in the general fund of the county or municipality “for the purpose of improving the efficiency of the administration of justice in the county or municipality.” See TEX. LOC. GOV'T CODE ANN. § 133.103(c); see also *Townsend*, 2019 WL 6205470, at \*8 (“[W]e conclude that § 133.103(c) . . . is facially constitutional because it allocates the funds for a legitimate criminal justice purpose.”).

As such, we conclude that Crooks was assessed unconstitutional costs of \$22.50 as part of the time payment fee and sustain his second issue.

#### IV. CONCLUSION

We modify the trial court’s judgment to reduce the time-payment fee assessed to \$2.50 and affirm as modified.

DORI CONTRERAS  
Chief Justice

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

Delivered and filed the  
12th day of November, 2020.