

NO. 12-14-00087-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*CHRISTOPHER LEE BLACK,
APPELLANT*

§ *APPEAL FROM THE 7TH*

V.

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,
APPELLEE*

§ *SMITH COUNTY, TEXAS*

MEMORANDUM OPINION

Christopher Lee Black appeals his conviction for burglary of a habitation. The trial court sentenced him to six years of imprisonment. In two issues, Appellant contends the trial court and the District Clerk erred in imposing attorney's fees against him. We affirm.

BACKGROUND

In June 2013, Appellant pleaded guilty to the offense of burglary of a habitation. The trial court placed him on deferred adjudication community supervision for six years. In February 2014, the State moved to proceed to final adjudication. Appellant pleaded true to the allegations in that motion. The trial court granted the motion, revoked Appellant's community supervision, and sentenced him to six years of imprisonment. Additionally, the court ordered him to pay \$274.00 in court costs.

ATTORNEY'S FEES

In his first issue, Appellant contends the trial court erred in imposing attorney's fees against him. In his second issue, Appellant contends the District Clerk erred in imposing attorney's fees against him. He argues that the trial court determined that he is indigent and appointed counsel to represent him. Because assessment of attorney's fees following a finding

of indigence is improper, he contends the judgment and the bill of costs should be modified to reflect the amount of proper taxable court costs due.

The record shows that the trial court found Appellant indigent and appointed counsel. The bill of costs from the District Clerk's office, prepared three days after the judgment was signed, reflects a total outstanding balance of \$574.00, which includes a \$300.00 assessment for attorney's fees. However, the judgment orders Appellant to pay \$274.00 in court costs. Additionally, an order to withdraw funds to pay court costs in the amount of \$274.00 was rendered ordering payment from Appellant's inmate trust account. This order was incorporated into the judgment.

Unless a material change in a criminal defendant's financial resources is established by competent legal evidence, once that defendant has been found to be indigent, he is presumed to remain indigent for the remainder of the proceedings. TEX. CODE CRIM. PROC. ANN. art. 26.04(p) (West Supp. 2014). Here, both sides agree that there is nothing in the record to indicate that Appellant's indigent status has changed.

A certified bill of costs, a governmental record, imposes an obligation upon a criminal defendant to pay court costs, irrespective of whether that bill is incorporated by reference into the written judgment. *Allen v. State*, 426 S.W.3d 253, 256-57 (Tex. App.—Texarkana 2013, no pet.). We review the assessment of court costs on appeal to determine if there is a basis for the cost. See *Johnson v. State*, 423 S.W.3d 385, 390 (Tex. Crim. App. 2014). Only statutorily authorized court costs may be assessed against a criminal defendant. *Id.* at 389 & n.3. Because Appellant remains indigent, the \$300.00 charge for attorney's fees on the bill of costs is erroneous. We therefore modify the bill of costs to delete the assessment for attorney's fees. See *Williams v. State*, 432 S.W.3d 450, 457 (Tex. App.—San Antonio 2014, pet. ref'd). We sustain Appellant's second issue. However, the judgment and the order to withdraw funds are consistent with a finding of indigence as they do not reflect an assessment for attorney's fees. Accordingly, there is no need to modify the judgment. We overrule Appellant's first issue.

DISPOSITION

Because the trial court did not impose attorney's fees on Appellant, we *affirm* the trial court's judgment.

GREG NEELEY
Justice

Opinion delivered April 8, 2015.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

APRIL 8, 2015

NO. 12-14-00087-CR

CHRISTOPHER LEE BLACK,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 7th District Court
of Smith County, Texas (Tr.Ct.No. 007-0203-13)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that the decision be certified to the court below for observance.

Greg Neeley, Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.