

**NO. 12-14-00143-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

*JOSHUA DANIEL ARDRY,  
APPELLANT*

§ *APPEAL FROM THE 114TH*

*V.*

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,  
APPELLEE*

§ *SMITH COUNTY, TEXAS*

---

---

***MEMORANDUM OPINION***

Joshua Daniel Ardry appeals his conviction for injury to a child. The trial court sentenced him to forty years of imprisonment. On appeal, Appellant contends the trial court erred in imposing attorney's fees against him. We affirm.

**BACKGROUND**

Appellant pleaded guilty to the offense of injury to a child pursuant to a plea bargain agreement. He was placed on deferred adjudication community supervision for ten years. In the order of deferred adjudication, the trial court assessed a total of \$669.00 for court costs without specifying individual costs. Payment of all court costs, including appointed counsel's fee, was a condition of his community supervision. The State later moved to proceed to final adjudication alleging several violations, none of which was the failure to pay attorney's fees. Appellant pleaded true to most of the allegations in the State's motion. The trial court granted the motion, revoked Appellant's community supervision, and sentenced him to forty years of imprisonment. The court's initial order adjudicating guilt and the final adjudication of guilt both indicate that the court did not assess any costs against Appellant. Additionally, the order to withdraw funds attached to the judgment adjudicating guilt indicates that no costs were assessed against Appellant.

### ATTORNEY'S FEES

In his sole issue, Appellant asserts that the trial court erred in imposing attorney's fees after he had been found indigent. He argues that the absence of an allegation by the State that he did not pay \$300.00 for attorney's fees leads to the conclusion that "Smith County collected \$300 from [him] to which legally it was not entitled." Appellant contends he could not have appealed from the order to pay attorney's fees because the bill of costs was not prepared until after he was placed under supervision and the costs had been paid.

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). Without record evidence demonstrating a defendant's financial resources to offset the costs of legal services, a trial court errs if it orders reimbursement of court appointed attorney's fees. *Williams v. State*, 332 S.W.3d 694, 699 (Tex. App.–Amarillo 2011, pet. denied). However, Appellant must raise this claim in a direct appeal from the initial judgment imposing community supervision or he forfeits the claim. *Riles v. State*, 452 S.W.3d 333, 337 (Tex. Crim. App. 2015).

The record shows that a total of \$669.00 for court costs was assessed in the 2011 order of deferred adjudication. One of the conditions of community supervision was to pay all court costs, including appointed counsel's fee, with the first such payment due the month following his placement on community supervision. Appellant did not appeal from the judgment placing him on community supervision. Contrary to his assertion, he had enough information to have known to challenge the order to pay the fee. He did not need to wait for a bill of costs to complain of the assessment of fees on appeal. *Id.* Therefore, Appellant has forfeited his complaint that the trial court erred in assessing attorney's fees against him in 2011. *Id.* We overrule Appellant's sole issue.

### DISPOSITION

Having overruled Appellant's sole issue, we *affirm* the trial court's judgment.

**BRIAN HOYLE**  
Justice

Opinion delivered July 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

JULY 8, 2015

NO. 12-14-00143-CR

**JOSHUA DANIEL ARDRY,**  
Appellant  
V.  
**THE STATE OF TEXAS,**  
Appellee

---

Appeal from the 114th District Court  
of Smith County, Texas (Tr.Ct.No. 114-0955-11)

---

THIS CAUSE came to be heard on the appellate record and the 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.

Brian Hoyle, Justice.

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