

NO. 12-15-00049-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*VALERIE SALYARDS GILMORE,
APPELLANT*

§ *APPEAL FROM THE 7TH*

V.

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,
APPELLEE*

§ *SMITH COUNTY, TEXAS*

MEMORANDUM OPINION

Valerie Salyards Gilmore appeals her conviction for possession of a controlled substance. She raises one issue on appeal relating to the trial court's order of withholding. We affirm.

BACKGROUND

A Smith County grand jury indicted Appellant for the offense of possession of a controlled substance, namely, methamphetamine, in an amount of one gram or more but less than four grams. The indictment also alleged that, prior to the commission of the current offense, Appellant was convicted of the felony offense of manufacture or delivery of a controlled substance.

Without a plea bargain agreement, Appellant pleaded "guilty" to the offense and "true" to the enhancement paragraph. After a presentence investigation was complete, the trial court conducted a sentencing hearing. After finding Appellant "guilty" and the enhancement paragraph "true," the trial court assessed Appellant's punishment at eight years of imprisonment. This appeal followed.

TRIAL COURT’S ORDER TO WITHDRAW FUNDS

In her sole issue on appeal, Appellant contends that the trial court erred in ordering funds to be withheld from her inmate trust account because the amount is not supported by a proper bill of costs.

Standard of Review and Applicable Law

The imposition of court costs upon a criminal defendant is a “nonpunitive recoupment of the costs of judicial resources expended in connection with the trial of the case.” *Johnson v. State*, 423 S.W.3d 385, 390 (Tex. Crim. App. 2014). When the imposition of court costs is challenged on appeal, we review the assessment of costs to determine if there is a basis for the cost, not to determine if there is sufficient evidence offered at trial to prove each cost. *Id.*

A bill of costs is not required to sustain statutorily authorized and assessed court costs, but it is the most expedient, and therefore, preferable method. *See id.* at 396. If a bill of costs is omitted, one can be prepared and presented to the appellate court in a supplemental clerk’s record. *See id.* at 392.

Discussion

After Appellant filed her brief, the record was supplemented with a bill of costs. *See id.* We first note that the amount reflected in the bill of costs is \$25.00 more than the costs reflected in the judgment and order of withholding. It appears that the \$25.00 difference represents a statutory “time payment fee,” which provides that a person convicted of a felony, who does not pay court costs imposed within thirty days of the date of the judgment is entered, should be charged a fee of \$25.00. *See* TEX. LOCAL GOV’T CODE ANN. § 133.103(a) (West Supp. 2014). The State requests this court to modify the trial court’s judgment to reflect the imposition of the additional \$25.00 to the total court costs amount. However, the State does not provide, nor are we aware of, any authority that authorizes an appellate court to increase the amount of court costs assessed. Accordingly, we overrule the State’s request.

Appellant does not challenge a specific cost or basis for the assessment of a particular cost. Absent such a challenge, the bill of costs is sufficient to support the trial court’s order to withdraw funds in this case. *See Johnson*, 423 S.W.3d at 396; *Pendergrass v. State*, No. 12-13-00322-CR, *1 (Tex. App.—Tyler no pet.) (mem. op., not designated for publication). We overrule Appellant’s sole issue.

DISPOSITION

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

JAMES T. WORTHEN
Chief 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. 12-15-00049-CR

VALERIE SALYARDS GILMORE,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 7th District Court
of Smith County, Texas (Tr.Ct.No. 007-1439-14)

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 this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.