

NO. 12-16-00140-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*MIGUEL ANGEL HINOJOSA,
APPELLANT*

§ *APPEAL FROM THE 114TH*

V.

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,
APPELLEE*

§ *SMITH COUNTY, TEXAS*

MEMORANDUM OPINION

Miguel Angel Hinojosa appeals his conviction for possession of a controlled substance. In his sole issue, Appellant argues the trial court erred by failing to award him credit towards his sentence for the time he spent in a substance abuse felony punishment facility (SAFP). We modify and affirm as modified.

BACKGROUND

On January 6, 2014, Appellant pleaded “guilty” to possession of a controlled substance and was placed on deferred adjudication community supervision for five years. On November 10, Appellant appeared before the court on a motion to adjudicate guilt, but was continued on deferred adjudication, the terms of which were modified to require successful completion of SAFP.

On October 5, 2015, Appellant appeared before the court for a status hearing. During that hearing, the court referenced a report it received that Appellant had successfully completed the inpatient phase of SAFP and was to begin an aftercare program on September 21. The trial court also approved Appellant’s request that his community supervision be transferred to Dallas.

On March 30, 2016, the State filed a motion to adjudicate Appellant’s guilt, alleging, in part, that Appellant committed a new offense and failed to successfully complete SAFP. On

April 29, Appellant pleaded “true” to several allegations, including failure to successfully complete SAFF. The court found all the allegations in the State’s motion to adjudicate “true” and found Appellant guilty of possession of a controlled substance. Appellant’s trial counsel informed the court that Appellant completed the inpatient portion of SAFF, but failed to complete aftercare. The trial court orally pronounced a sentence of imprisonment for ten years with credit for time served. On May 4, the court signed a written judgment, which indicated that Appellant would receive credit for eighty two days served in the county jail. This appeal followed.

On appeal, this Court noted that there was some evidence that Appellant had completed the inpatient portion of the SAFF program, however, the record did not contain his exact release date from the facility. *See Hinojosa v. State*, No. 12-16-00140-CR (Tex. App.—Tyler May 24, 2017) (per curiam order). Thus, because the record failed to contain the necessary data and information for modification of the judgment, we abated this appeal and remanded the case to the trial court to hold a hearing to determine (1) whether Appellant successfully completed the inpatient portion at a SAFF facility, and (2) if he did, how many days should be credited towards his sentence. *See id.*

On June 8, 2017, the trial court held a hearing, during which both the State and Appellant agreed that Appellant completed the inpatient portion of SAFF and was incarcerated in a SAFF facility from December 9, 2014 until his release on September 13, 2015. The State and Appellant further agreed that Appellant is entitled to credit for an additional two hundred and seventy seven days, which reflects the time he spent in SAFF. Thereafter, the trial court made written findings of fact and conclusions of law, stating that Appellant had successfully completed the inpatient portion of SAFF and is entitled to two hundred and seventy seven days credit towards his sentence, in addition to the eighty two days previously credited.

ANALYSIS

In his sole issue, Appellant argues that the trial court erred by failing to credit his time spent in a SAFF facility towards his sentence. In our abatement order, we noted that if Appellant successfully completed the inpatient portion of the program, he is entitled to a credit for that

time. See TEX. CODE CRIM. PROC. ANN. art. 42A.755(d) (West Supp. 2016)¹ (on revocation, trial court shall credit to defendant time served as a condition of community supervision in a substance abuse felony punishment facility, but only if defendant successfully completed the treatment program in that facility); *Deveraux v. State*, Nos. 12-13-00284-CR, 12-13-00285-CR, 2014 WL 977475, at *2 (Tex. App.—Tyler Mar. 12, 2014, no pet.) (mem. op., not designated for publication) (holding that an appellant is not required to complete a subsequent program to receive credit on sentence for time served in a SAFP facility).

We have the authority to modify a judgment to make the record speak the truth when we have the necessary data and information to do so. *Ingram v. State*, 261 S.W.3d 749, 754 (Tex. App.—Tyler 2008, no pet.); *Davis v. State*, 323 S.W.3d 190, 198 (Tex. App.—Dallas 2008, pet. ref'd). The trial court's written findings and the record of the June 8 hearing provide this court with the necessary data and information to modify the judgment. See *Ingram*, 261 S.W.3d at 754; see also *Davis*, 323 S.W.3d at 198. Specifically, the trial court found that Appellant (1) completed the inpatient portion of SAFP, and (2) should receive an additional two hundred and seventy seven days credit for time served from December 9, 2014 through September 13, 2015 in a SAFP facility.² Accordingly, the trial court's judgment should be modified to reflect the number of days Appellant spent in SAFP. We sustain Appellant's sole issue.

DISPOSITION

Having sustained Appellant's sole issue, we *modify* the trial court's judgment of adjudication by deleting the second date range listed in the "Time Credited" column, which states "11-03-14 to 12-09-14," and replacing it with "11-03-14 to 09-13-2015[.]"³ We further *modify* the trial court's order of adjudication by deleting "82" on the last line of text above the date and signature, which states "It is further ordered that the defendant be given credit for 82

¹ Article 42.12 of the code of criminal procedure was repealed and recodified, effective January 1, 2017, within Chapter 42A. See Tex. H.B. 2299 §§ 3.01, 4.02, 84th Leg., C.S. (2015). We cite to the current version of the law, i.e., Article 42A.755, because the recodification is "intended as a codification only, and no substantive change in the law is intended." Tex. H.B. 2299 § 4.01, 84th Leg., C.S. (2015).

² Although December 9, 2014 through September 13, 2015 is two hundred and seventy eight days, the trial court noted on the record, and both sides agreed, that Appellant's original judgment had already credited him with December 9, 2014, thus he should only receive an additional two hundred and seventy seven days credit.

³ The judgment previously credited Appellant for a date range of "11-03-14 to 12-09-14." Since the judgment and record reflect that Appellant was continuously incarcerated since November 3, 2014, until his release from SAFP on September 13, 2015, the above modification is appropriate.

days served in jail[.]” and replacing it with “359[.]” Accordingly, we *modify* the trial court’s judgment and *affirm* as *modified*.

JAMES T. WORTHEN
Chief Justice

Opinion delivered June 30, 2017.

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

JUNE 30, 2017

NO. 12-16-00140-CR

MIGUEL ANGEL HINOJOSA,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1433-13)

THIS CAUSE came on to be heard on the appellate record and the briefs filed herein; and the same being inspected, it is the opinion of the Court that the trial court's judgment below should be **modified and, as modified, affirmed**.

It is therefore ORDERED, ADJUDGED and DECREED that the trial court's judgment below be **modified** by deleting the second date range listed in the "Time Credited" column, which states "11-03-14 to 12-09-14," and replacing it with "11-03-14 to 09-13-2015[.]" We further **modify** the trial court's order of adjudication by deleting "82" on the last line of text above the date and signature, which states "It is further ordered that the defendant be given credit for 82 days served in jail[]" and replacing it with "359"; **and as modified**, the trial court's judgment is **affirmed**; and that this decision be certified to the trial court below for observance.

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