

NO. 12-16-00173-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*ERNEST GREEN,
APPELLANT*

§ *APPEAL FROM THE 114TH*

V.

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,
APPELLEE*

§ *SMITH COUNTY, TEXAS*

MEMORANDUM OPINION

Ernest Green appeals his conviction of felony theft. In one issue, Appellant argues that the trial court improperly assessed court costs in its judgment. We modify and affirm as modified.

BACKGROUND

Appellant was charged by indictment with felony theft and pleaded “not guilty.” A jury found Appellant “guilty” as charged and assessed his punishment at imprisonment for ten years. The trial court sentenced Appellant accordingly, and this appeal followed.

COURT COSTS

In his sole issue, Appellant argues that the trial court erred in withdrawing funds from Appellant’s inmate trust account based on costs assessed in the trial court’s judgment because those costs are not supported by a statutorily required bill of costs. We review Appellant’s issue as a challenge to the sufficiency of the evidence supporting court costs.

Standard of Review and Applicable Law

A challenge to the sufficiency of the evidence supporting court costs is reviewable on direct appeal in a criminal case. *See Armstrong v. State*, 340 S.W.3d 759, 767 (Tex. Crim. App.

2011). We measure sufficiency by reviewing the record in the light most favorable to the award. *Mayer v. State*, 309 S.W.3d 552, 557 (Tex. Crim. App. 2010); *Cardenas v. State*, 403 S.W.3d 377, 382 (Tex. App.–Houston [1st Dist.] 2013, no pet.). Requiring a convicted defendant to pay court costs does not alter the range of punishment, is authorized by statute, and is generally not conditioned on a defendant’s ability to pay. See TEX. CODE CRIM. PROC. ANN. art. 42.16 (West 2006); *Armstrong*, 340 S.W.3d at 767; see also *Johnson v. State*, 405 S.W.3d 350, 353 (Tex. App.–Tyler 2013, no pet.)

Evidence Supporting Assessment of Costs

The judgment of conviction reflects that the trial court assessed \$380.00 in court costs. The judgment includes a document identified as “Attachment A Order to Withdraw Funds,” which states that Appellant has incurred “[c]ourt costs, fees and/or fines and/or restitution” in the amount of \$380.00. The certified bill of costs itemizes the court costs imposed, which total \$275.00.¹ Therefore, we hold that the costs imposed in the trial court’s judgment are not supported by sufficient evidence. Appellant’s sole issue is sustained.

CONCLUSION

Having sustained Appellant’s sole issue, we *modify* the trial court’s judgment to reflect that the amount of court costs is \$275.00. See TEX. R. APP. P. 43.2(b). We also *modify* Attachment A to state that the total amount of “court costs, fees and/or fines and/or restitution” is \$275.00. See, e.g., *Reyes v. State*, 324 S.W.3d 865, 868 (Tex. App.–Amarillo 2010, no pet.). We *affirm* the trial court’s judgment *as modified*. See TEX. R. APP. P. 43.2(b).

JAMES T. WORTHEN
Chief Justice

Opinion delivered March 22, 2017.

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

(DO NOT PUBLISH)

¹ We have reviewed each of the fees listed in the bill of costs. All of the costs and fees are authorized by statute. See, e.g., *Ireland v. State*, No. 03-14-00616-CR, 2015 WL 4914982, at *3 n.3 (Tex. App.–Austin Aug. 12, 2015, no pet.) (mem. op., not designated for publication).



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 22, 2017

NO. 12-16-00173-CR

ERNEST GREEN,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-1671-15)

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** to reflect that the amount of court costs is \$275.00; Attachment A is also **modified** to state that the total amount of "court costs, fees and/or fines and/or restitution" is \$275.00; **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.