

NO. 12-16-00318-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

LENNEL JONES CHOICE,
APPELLANT

§ *APPEAL FROM THE 241ST*

V.

§ *JUDICIAL DISTRICT COURT*

THE STATE OF TEXAS,
APPELLEE

§ *SMITH COUNTY, TEXAS*

MEMORANDUM OPINION

Lennel Jones Choice appeals his conviction for aggravated kidnapping. In one issue, he argues that some of the court costs imposed on him in the trial court’s judgment are unconstitutional. We affirm.

BACKGROUND

Appellant was charged by indictment with aggravated kidnapping. The indictment further alleged that Appellant had a prior felony conviction. Appellant pleaded “not guilty,” and the matter proceeded to a jury trial. The jury found Appellant “guilty” as charged. Following a trial on punishment, at which Appellant pleaded “true” to the enhancement allegation, the jury assessed his punishment at imprisonment for fifty years. The trial court sentenced Appellant accordingly, and this appeal followed.

COURT COSTS

In his sole issue, Appellant argues that we should modify the trial court’s judgment and withdrawal order to remove certain unconstitutional court costs.

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). The consolidated fee statute requires a defendant to pay a court cost of \$133 on conviction of a felony. TEX. LOC. GOV'T CODE ANN. § 133.102(a)(1) (West Supp. 2016). The money received is divided among a variety of state government accounts according to percentages dictated by the statute. See *id.* § 133.102(e) (West Supp. 2016); *Salinas v. State*, No. PD-0170–16, 2017 WL 915525, at *1 (Tex. Crim. App. Mar. 8, 2017). In *Salinas*, the court of criminal appeals held the statute unconstitutional with respect to two of these accounts—an account for “abused children’s counseling” and an account for “comprehensive rehabilitation.” See *Salinas*, 2017 WL 915525, at *1. As a result, the court held that any fee assessed pursuant to the statute must be reduced pro rata to eliminate the percentage of the fee associated with these accounts. *Id.* The court further held that its holding applies only to (1) a defendant who raised the appropriate claim in a petition for discretionary review before the date of the court’s opinion, if that petition is still pending on that date and the claim would otherwise be properly before the court on discretionary review or (2) a defendant whose trial ends after the mandate in *Salinas* issues. *Id.* at *6.

Analysis

Here, the bill of costs indicates that the \$133 consolidated fee was assessed. However, because (1) no petition for discretionary review is pending on Appellant’s claim, and (2) the proceedings in the trial court ended on November 16, 2016—long before the court of criminal appeals’s March 8, 2017, decision in *Salinas*—the court’s holding in that case does not apply. See *id.*; see also *White v. State*, No. 12-16-00110-CR, 2017 WL 2266998, at *1–2 (Tex. App.–Tyler May 24, 2017, no pet. h.) (mem. op., not designated for publication). Appellant’s sole issue is overruled.

DISPOSITION

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

BRIAN HOYLE
Justice

Opinion delivered August 23, 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

AUGUST 23, 2017

NO. 12-16-00318-CR

LENNEL JONES CHOICE,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 241st District Court
of Smith County, Texas (Tr.Ct.No. 241-1059-16)

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.

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