

**NO. 12-17-00031-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

*TONY ANTHONY WHITE,  
APPELLANT*

§ *APPEAL FROM THE 7TH*

*V.*

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,  
APPELLEE*

§ *SMITH COUNTY, TEXAS*

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***MEMORANDUM OPINION***

Tony Anthony White appeals his conviction for aggravated sexual assault of a child. 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 continuous sexual abuse of a child. The indictment further alleged that Appellant had two prior felony convictions. Appellant pleaded "not guilty," and the matter proceeded to a jury trial. The jury found Appellant "guilty" of the lesser included offense of aggravated sexual assault of a child. Following a trial on punishment, at which Appellant pleaded "true" to the enhancement allegations, the jury assessed his punishment at imprisonment for life. 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. 2017). 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. 2017); *Salinas v. State*, 523 S.W.3d 103, 106 (Tex. Crim. App. 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*, 523 S.W.3d at 105. 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. *See 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. *See id.* at 112–13.

### **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 January 13, 2017—well before the court’s March 8, 2017, decision in *Salinas*—the court’s holding in that case does not apply. *See id.*; *see also James v. State*, No. 05-16-01313-CR, 2017 WL 4944877, at \*1 (Tex. App.–Dallas Nov. 1, 2017, no pet.) (mem. op., not designated for publication); *White v. State*, No. 12-16-00110-CR, 2017 WL 2266998, at \*1–2 (Tex. App.–Tyler May 24, 2017, no pet.) (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.

**JAMES T. WORTHEN**  
Chief Justice

Opinion delivered December 13, 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**

**DECEMBER 13, 2017**

**NO. 12-17-00031-CR**

**TONY ANTHONY WHITE,**  
Appellant  
V.  
**THE STATE OF TEXAS,**  
Appellee

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Appeal from the 7th District Court  
of Smith County, Texas (Tr.Ct.No. 007-0534-16)

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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.*