

NO. 12-17-00053-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***MONTRAVION MAPPS,
APPELLANT***

§ ***APPEAL FROM THE 114TH***

V.

§ ***JUDICIAL DISTRICT COURT***

***THE STATE OF TEXAS,
APPELLEE***

§ ***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION

Montravion Mapps appeals his conviction for indecency with a child. In two issues, Appellant argues the deferred adjudication statute is unconstitutional and the judgment imposes unconstitutional court costs. We affirm.

BACKGROUND

Appellant was charged by indictment with indecency with a child by sexual contact. He pleaded “guilty,” and, after a hearing on punishment, was sentenced to imprisonment for twenty years. This appeal followed.

CONSTITUTIONALITY OF STATUTE

In his first issue, Appellant contends Article 42A.102 of the Texas Code of Criminal Procedure is unconstitutional both facially and “as applied” because it shifts the burden of proof to the defendant.

Standard of Review

When confronted with an attack on the constitutionality of a statute, we presume that the statute is valid. *Rodriguez v. State*, 93 S.W.3d 60, 69 (Tex. Crim. App. 2002). The burden rests upon the individual attacking the statute to establish that it is unconstitutional. *Id.* A party

raising a facial challenge to the constitutionality of a statute must demonstrate that the statute operates unconstitutionally in all of its applications. *See Gillenwaters v. State*, 205 S.W.3d 534, 536 n.2 (Tex. Crim. App. 2006). A claim that a statute is unconstitutional “as applied” asserts that the statute, although generally constitutional, operates unconstitutionally in specific circumstances. *See id.* at 536 n.3.

Analysis

A person charged with indecency with a child may only be placed on deferred adjudication community supervision if the judge finds that doing so is in the best interest of the victim. TEX. CODE CRIM. PROC. ANN. art. 42A.102(a) (West Supp. 2016); TEX. PENAL CODE ANN. § 21.11 (West 2011). Because Article 42A.102 requires the defendant to prove that deferred adjudication is in the best interest of the victim, Appellant argues that the statute shifts the burden of proof to the defendant and is, therefore, unconstitutional.

The State argues that Appellant has failed to preserve his complaint for appellate review. We agree. Generally, a complaint must be made to the trial court by a timely request, objection, or motion. TEX. R. APP. P. 33.1. Complaints regarding the constitutionality of criminal statutes are not exempt from this rule. *See Karenev v. State*, 281 S.W.3d 428, 434 (Tex. Crim. App. 2009). A defendant may not raise a facial challenge to the constitutionality of a statute for the first time on appeal. *Id.* And an “as applied” constitutional claim is also subject to the preservation requirement and must be presented at the trial court level to preserve error. *Reynolds v. State*, 423 S.W.3d 377, 383 (Tex. Crim. App. 2014). In this case, the record contains no evidence that Appellant raised at trial either a facial challenge to the alleged unconstitutional burden shifting of Article 42A.102 or a challenge to the constitutionality of the statute as applied. Accordingly, he has failed to preserve his first issue for appellate review. *See Reynolds*, 423 S.W.3d at 383; *see also Karenev*, 281 S.W.3d at 434. We overrule issue one.

COURT COSTS

In his second issue, Appellant argues that this Court should modify the trial court’s judgment to remove 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). The court of criminal appeals has 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 the 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 final judgment shows a court cost assessment of \$579. The bill of costs shows that the \$133 consolidated court cost 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 February 6, 2017—prior to the court of criminal appeals’s decision in *Salinas*—the court’s holding in that case does not apply. *See id.* Accordingly, we overrule Appellant’s second issue.

DISPOSITION

Having overruled Appellant’s two issues, 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. 12-17-00053-CR

MONTRAVION MAPPS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-0685-16)

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.