

**NO. 12-17-00110-CR**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

*AARON YOUNG, IV,  
APPELLANT*

§ *APPEAL FROM THE 114TH*

*V.*

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,  
APPELLEE*

§ *SMITH COUNTY, TEXAS*

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***MEMORANDUM OPINION***

Appellant Aaron Young, IV appeals his conviction for tampering with a governmental record. In one issue, he argues that the trial court erred in imposing court costs for fees that have been held to be unconstitutional. We affirm.

**BACKGROUND**

Appellant was indicted for the state jail felony offense of tampering with a governmental record which was enhanced to a second degree felony punishment range by two previous, sequential felony convictions. Appellant entered a plea of “guilty” to the indictment, and, on March 16, 2017, the trial court sentenced him to fifteen years of imprisonment. This appeal followed.

**COURT COSTS**

In one issue, Appellant argues that the trial court erred in imposing a \$133 consolidated court costs fee because portions of the fee have been held to be unconstitutional.

**Applicable Law**

The imposition of court costs upon a criminal defendant is a “non-punitive 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 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 judgment shows a court cost assessment of \$229, and the bill of costs shows 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 March 16, 2017—well before the court of criminal appeals’ June 30, 2017 mandate in *Salinas*—the court’s holding in that case does not apply.<sup>1</sup> See *id.*; see also *Salinas v. State*, No. PD-0170-16 (Tex. Crim. App. June 30, 2017) (mandate). Accordingly, we overrule Appellant’s issue.

### **DISPOSITION**

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

**GREG NEELEY**  
Justice

Opinion delivered September 6, 2017.

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

(DO NOT PUBLISH)

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<sup>1</sup> The State filed a letter brief in which it conceded error in the assessment of the \$133 fee and urged this Court to modify the trial court’s judgment accordingly. The State based its reasoning on the date of the opinion in *Salinas*, which was March 8, 2017; however, the court specifically held that the holding applied only to cases that ended in the trial court after the issuance of the mandate in *Salinas*, which did not occur until June 30, 2017. *Salinas*, 2017 WL 915525, at \*6; *Salinas v. State*, No. PD-0170-16 (Tex. Crim. App. June 30, 2017) (mandate).



## COURT OF APPEALS

### TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

#### JUDGMENT

SEPTEMBER 6, 2017

NO. 12-17-00110-CR

AARON YOUNG, IV,  
Appellant  
V.  
THE STATE OF TEXAS,  
Appellee

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Appeal from the 114th District Court  
of Smith County, Texas (Tr.Ct.No. 114-0700-16)

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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.

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