

NO. 12-17-00118-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*ISAIAS ALVAREZ,
APPELLANT*

§ *APPEAL FROM THE 114TH*

V.

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,
APPELLEE*

§ *SMITH COUNTY, TEXAS*

MEMORANDUM OPINION

Isaias Alvarez appeals his conviction for possession with intent to deliver. In a single issue, he contends the judgment should be modified to reflect the correct offense. We modify the trial court's judgment and affirm as modified.

BACKGROUND

Appellant was charged by indictment with possession of a controlled substance with intent to deliver. He pleaded "guilty" and was placed on ten years deferred adjudication community supervision. The State later filed a motion to adjudicate guilt, which included a request to revoke Appellant's community supervision. Appellant pleaded "true" to the allegations that he violated the terms of his community supervision. Following a hearing, the trial court found that the allegations were "true," revoked Appellant's community supervision, and sentenced him to imprisonment for forty years. This appeal followed.

ERROR IN JUDGMENT

In his sole issue, Appellant contends the judgment incorrectly reflects that he was convicted of manufacture and delivery of a controlled substance instead of possession of a controlled substance with intent to deliver. Appellant was charged by indictment with

“possession of controlled substance w[ith] intent to deliver.” However, the judgment states that Appellant was convicted of manufacture or delivery of a controlled substance in an amount between four and two hundred grams. Therefore, the judgment is incorrect. The State concedes that the judgment should be modified to reflect the correct charge.

We have the authority to modify the judgment to make the record speak the truth when we have the necessary data and information to do so. *Ingram v. State*, 261 S.W.3d 749, 754 (Tex. App.—Tyler 2008, no pet.); *Davis v. State*, 323 S.W.3d 190, 198 (Tex. App.—Dallas 2008, pet. ref’d). Texas Rule of Appellate Procedure 43.2 expressly authorizes an appellate court to modify the trial court’s judgment. TEX. R. APP. P. 43.2(b). In this case, we have the necessary data and information to modify the judgment to reflect that Appellant was charged with possession of a controlled substance with intent to deliver. *See id.*; *see also Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529-30 (Tex. App.—Dallas 1991, pet. ref’d). We sustain Appellant’s sole issue.

DISPOSITION

Having sustained Appellant’s sole issue, we *modify* the judgment to replace “man del cs pg 1>=4G<200G” with “possession of controlled substance with intent to deliver” in the “offense” portion of the judgment, and *affirm* the judgment as modified.

GREG NEELEY
Justice

Opinion delivered September 20, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

SEPTEMBER 20, 2017

NO. 12-17-00118-CR

ISAIAS ALVAREZ,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th District Court
of Smith County, Texas (Tr.Ct.No. 114-0582-11)

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 replace "man del cs pg 1>=4G<200G" with "possession of controlled substance with intent to deliver" in the "offense" portion of the judgment; **and as modified**, the trial court's judgment is **affirmed**; and that this decision be certified to the trial court below for observance.

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