

**NOS. 12-17-00185-CR
12-17-00186-CR
12-17-00187-CR
12-17-00188-CR
12-17-00189-CR
12-17-00190-CR**

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***FREDDY LEE CRISS,
APPELLANT***

§ *APPEALS FROM THE 241ST*

V.

§ *JUDICIAL DISTRICT COURT*

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

§ *SMITH COUNTY, TEXAS*

MEMORANDUM OPINION

Freddy Lee Criss appeals his five convictions for aggravated robbery, and one conviction for evading arrest or detention with a vehicle. In one issue in each case, he argues that the trial court erred by imposing unconstitutional court costs. We affirm.

BACKGROUND

In five separate cases, Appellant was charged by indictment with aggravated robbery, a first degree felony. All of the aggravated robbery indictments also alleged that he used or exhibited a deadly weapon, to wit: a firearm, during the commission of or immediate flight from each offense. Appellant was also charged by indictment with evading arrest or detention with a vehicle, a third degree felony. All of Appellant's indictments contained two enhancement

provisions, alleging that he had previously been finally convicted of the felony offense of aggravated robbery and then, sequentially, another felony offense of aggravated robbery.¹

Appellant entered an “open” plea of “guilty” to each of the above six cases with no agreed punishment recommendation, and pleaded “true” to the enhancement paragraphs in each case. The trial court found Appellant “guilty” of aggravated robbery in each of the five cases as charged in the indictments, found him “guilty” of evading arrest or detention with a vehicle as charged in the indictment, found the enhancement paragraphs in each case to be “true,” and made an affirmative finding of a deadly weapon in each of the aggravated robbery cases.

After a punishment hearing, the trial court sentenced Appellant to life imprisonment in each of the aggravated robbery cases, and life imprisonment in the evading arrest case. Further, in each case, the trial court ordered that Appellant pay court costs in the amount of \$229.00, including \$133.00 as a “Consolidated Court Costs Fee.” Because he was unable to pay, the trial court ordered monthly withdrawals from Appellant’s inmate trust account. This appeal followed.

COURT COSTS

In Appellant’s sole issue in each case, he argues that the trial court erred by imposing 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 \$133.00 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 to be 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 set

¹ Pursuant to Section 12.42(d), if it is shown on the trial of a felony offense other than a state jail felony punishable under Section 12.35(a) that the defendant has previously been convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished by imprisonment for life, or for any term of not more than ninety-nine years or less than twenty-five years. *See* TEX. PENAL CODE ANN. § 12.42(d) (West Supp. 2017).

forth 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 112–13.²

Analysis

With the exception of the amounts allocated to the abused children’s counseling and comprehensive rehabilitation accounts, Appellant does not contest the amount of court costs assessed against him. He points to the constitutionality of those fees under *Salinas* and argues that the amount of court costs should be proportionately reduced. Because (1) no petition for discretionary review is pending on Appellant’s claim and (2) the proceedings in the trial court ended on May 26, 2017—prior to the court’s mandate in *Salinas* on June 30, 2017—the court’s holding in that case does not apply. *See id.*; *see also Salinas v. State*, No. PD-0170-16 (Tex. Crim. App. June 30, 2017) (mandate); *Smith v. State*, No. 12-17-00089-CR, 2018 WL 345740, at *4 (Tex. App.—Tyler Jan. 10, 2017, no pet.) (mem. op., not designated for publication).

Nevertheless, Appellant urges this court to modify the judgment and refund the fees that have been held by the *Salinas* court as unconstitutional based upon the recent United States Supreme Court ruling in *Nelson v. Colorado*, 581 U.S. ____, 137 S.Ct. 1249, 197 L.Ed. 2d 611 (2017). Appellant acknowledges that his trial ended before the mandate in *Salinas* issued but argues that the holding in *Nelson* requires us to apply *Salinas* to all cases on appeal after the mandate. We decline to do so.

In *Nelson*, one petitioner was acquitted of the charges against her and one petitioner’s conviction was vacated; both sought refunds of monies paid and allocated to costs, fees, and restitution. *See id.*, 581 U.S. ____, 137 S.Ct. at 1250–51. The *Nelson* opinion held that Colorado’s Exoneration Act, which conditioned a refund of monies paid as a result of criminal prosecution on a defendant initiating a civil proceeding and proving his innocence by clear and convincing evidence, violated petitioners’ due process rights under the Fourteenth Amendment

² Before the mandate issued, the Legislature amended Section 133.102(e), effective June 15, 2017, to redirect funds previously allowed to abused children’s counseling and comprehensive rehabilitation to the fair defense account. *See* Act of May 18, 2017, 85th Leg., R.S., ch. 966, § 1, 2017 Tex. Sess. Law Serv. 3917, 3917-18 (West) (current version at TEX. LOC. GOV’T CODE § 133.102(e)).

because both petitioners were in the position of enjoying the presumption of innocence. *See id.*; *see also* U.S. CONST. amend. XIV.

We are not persuaded that *Nelson* impacts *Salinas*. In *Salinas*, the court of criminal appeals held that because its ruling was based on the separation of powers provision of the Texas Constitution, it was free to decide which retroactivity rules apply. *Salinas*, 523 S.W.3d at 111–12 (stating that the *Griffith v. Kentucky*, 479 U.S. 314, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1987) retroactivity rule that newly announced federal constitutional rules must be retroactively applied to all cases pending on direct review or not yet final when the rule was announced is binding upon the states only when federal constitutional errors are involved but does not bind the states on matters of state law). The court concluded that its new state constitutional rule did not involve the personal rights of a defendant and therefore it would conduct a *Stovall* analysis, which requires consideration of (1) the purpose to be served by the new standards, (2) the extent of reliance by law enforcement authorities on the old standards, and (3) the effect a retroactive application of new standards would have on the administration of justice. *See id.* at 112; *see also Stovall v. Denno*, 388 U.S. 293, 297, 87 S. Ct. 1967, 1970, 18 L. Ed. 2d 1199 (1967), *overruled by Griffith*, 479 U.S. 314, 107 S. Ct. 708. The court noted that the outcome of this balancing test usually turned on whether the new rule impacts the truth-finding function of the courts or is merely procedural. *See Salinas*, 523 S.W.3d at 112. Holding that the costs a defendant pays has nothing to do with truth-finding, that the State’s reliance interests are heavy, and that retroactivity could create large administrative burdens on court clerks throughout the state, the court determined that its ruling should only apply prospectively and to defendants who raised the appropriate claim in a petition for discretionary review before the date of the opinion. *See id.* at 112–13.

Thus, because the *Nelson* holding was predicated upon a violation of the due process clause under the Fourteenth Amendment, and the *Salinas* holding is predicated upon the separation of powers doctrine under the Texas Constitution, which does not affect a defendant’s personal rights, we decline to apply *Nelson* to Appellant. *See id.*; *see also Nelson*, 581 U.S. ____, 137 S. Ct. at 1250-51; *Waters v. State*, No. 12-17-00202-CR, 2018 WL 524870, at *2–3 (Tex. App.—Tyler Jan. 24, 2018, no pet.) (mem. op., not designated for publication). Further, we are required to comply with the instructions set out in the court of criminal appeals’ opinions because they are binding authority on this Court. *See Purchase v. State*, 84 S.W.3d 696, 701

(Tex. App.—Houston [1st Dist.] 2002, pet. ref'd); *Fielder v. State*, No. 12-11-00090-CR, 2012 WL 951916, at *2 (Tex. App.—Tyler March 14, 2012, pet ref'd) (mem. op., not designated for publication); *see also* TEX. CONST. art. V, § 5(a) (stating that the court of criminal appeals is final authority for criminal law in Texas). Accordingly, based on the foregoing reasons, we overrule Appellant's sole issue in each of his six cases.

DISPOSITION

Having overruled Appellant's sole issue, we *affirm* the judgments of the trial court.

GREG NEELEY
Justice

Opinion delivered April 25, 2018.

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

APRIL 25, 2018

NO. 12-17-00185-CR

FREDDY LEE CRISS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 241st District Court
of Smith County, Texas (Tr.Ct.No. 241-0061-17)

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.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

APRIL 25, 2018

NO. 12-17-00186-CR

FREDDY LEE CRISS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 241st District Court
of Smith County, Texas (Tr.Ct.No. 241-0062-17)

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.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

APRIL 25, 2018

NO. 12-17-00187-CR

FREDDY LEE CRISS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 241st District Court
of Smith County, Texas (Tr.Ct.No. 241-0063-17)

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.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

APRIL 25, 2018

NO. 12-17-00188-CR

FREDDY LEE CRISS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 241st District Court
of Smith County, Texas (Tr.Ct.No. 241-0064-17)

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.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

APRIL 25, 2018

NO. 12-17-00189-CR

FREDDY LEE CRISS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 241st District Court
of Smith County, Texas (Tr.Ct.No. 241-0065-17)

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.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

APRIL 25, 2018

NO. 12-17-00190-CR

FREDDY LEE CRISS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 241st District Court
of Smith County, Texas (Tr.Ct.No. 241-0066-17)

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.