

**No. 01-24-00814-CR**

**IN THE COURT OF APPEALS  
FOR THE FIRST DISTRICT OF TEXAS**

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**PONWKA ROBINSON**

*Appellant*

DEBORAH M. YOUNG  
Clerk of The Court

**v.**

**THE STATE OF TEXAS**

*Appellee*

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On Appeal from Cause No. 1735005  
From the 185th District Court of Harris County, Texas

**BRIEF FOR APPELLANT**

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**PRESIDING JUDGE:**

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## STATEMENT OF THE CASE

December 21, 2021	Robinson was indicted for the offense of driving while intoxicated, third offense. His indictment included two enhancement paragraphs. CR at 20.
August 29, 2022	Robinson and the State entered into a plea agreement: The State abandoned both enhancement paragraphs and both sides agreed to a sentence of ten years imprisonment, probated for five years. CR at 25, 38.
May 23, 2024	The State filed a <i>Motion to Revoke Community Supervision</i> , alleging violations of probation which included Robinson's arrest for driving while intoxicated. CR at 63.
September 26, 2024	A hearing on the State's <i>Motion to Revoke Community Supervision</i> was held. 1 RR at 1. The court revoked Robinson's probation and sentenced him to ten years in prison. CR at 83.
October 15, 2024	Notice of Appeal was timely filed. CR at 97.

### **STATEMENT REGARDING ORAL ARGUMENT**

The issues in this case are not complex and the Court would not be aided by oral argument. Mr. Robinson does not request oral argument.

### **ISSUE PRESENTED**

**The trial court erred in assessing a fine that was not orally pronounced at sentencing. This Court should modify the judgment to delete the \$100 Fine and remove the fine from the bill of costs.**

## STATEMENT OF FACTS

Ponwka Robinson was indicted for driving while intoxicated as a third offender on December 21, 2021. CR at 20. Driving while intoxicated with two prior convictions for the same is a third-degree felony. TEX. PENAL CODE § 49.09(b)(2). The indictment also alleged two enhancement paragraphs. Robinson entered into a plea agreement with the State, the terms of which included Robinson's pleading guilty to an agreed sentence of ten years imprisonment, probated for five years, and the State's abandoning both enhancement paragraphs. CR at 25, 28.

Approximately two years later, the State filed a *Motion to Revoke Community Supervision*, alleging Robinson violated the terms of his probation by committing a new offense of driving while intoxicated. CR at 63. The State also accused Robinson of driving without a valid driver's license, driving without permission of the court, drinking alcohol, and failing to attend a treatment program. CR at 63; 1 RR at 15–16.

At a revocation hearing, Robinson pleaded not true to the probation violations. 1 RR at 16. The State called two witnesses. The first State's witness was the probation officer for the 185th Criminal District Court. 1 RR at 17. The officer sponsored Robinson's probation file, of which the court took judicial

notice. 1 RR at 18. Contained in the probation file was Robinson's probationary terms and conditions, which he had signed. 1 RR at 20.

The probation officer testified that Robinson was to not drive without a valid driver's license and was also not allowed drive without permission from the court. 1 RR at 21–22. Robinson was also given a condition to not commit any new law offenses. 1 RR at 23. Additionally, Robinson was to attend an "intensive outpatient program and/or supportive outpatient program and aftercare until successfully completed." 1 RR at 22. The witness testified that Robinson had not complied with that condition because he had not yet begun treatment, although he admitted that Robinson had until the end of his probationary period to complete that requirement. 1 RR at 22, 25.

The probation officer confirmed that Robinson has a "vast history of mental-health-related illnesses," and takes several medications for mental health purposes, including Abilify, Trazadone, Prozac, Wellbutrin, and Soma. 1 RR at 25. During his probationary period, Robinson's probation was transferred to a mental-health probation. 1 RR at 26. During his probation, he reported symptoms of mood dysregulation, including "paranoia, rumination, nightmares, cold sweats," as well as hallucinations related to bipolar disorder. 1 RR at 27–28. Robinson was diagnosed with schizoaffective disorder bipolar



type and post-traumatic stress disorder; he reported five suicide attempts during his probation. 1 RR at 28.

The State's second witness was a police officer for the Houston Police Department. 1 RR at 31. The officer was dispatched to a single-vehicle crash in the early morning hours of May 2024. 1 RR at 32–33. The officer identified Robinson as the person arrested that day. 1 RR at 32. The officer testified that, upon investigation, he found that Robinson's license was "noneligible" and believed Robinson was intoxicated. 1 RR at 35, 38.

The court revoked Robinson's probation and sentenced him to ten years' imprisonment. CR at 83. The trial court found that Paragraphs 1 and 24 of the *Motion to Revoke Community Supervision* true, that Robinson had committed an offense against the State of Texas by driving while intoxicated and had operated a motor vehicle without a valid driver's license and without permission of the court. 1 RR at 49, 61; St. Ex. 2. The trial judge noted that Paragraph 26 had been abandoned by the State and made no finding on Paragraph 28—the allegation that Robinson had failed to attend a treatment program—"due to the length of time he still had to complete that treatment program." 1 RR at 49, 61; St. Ex. 2.

## SUMMARY OF THE ARGUMENT

The trial court erred in its assessment of an EMS trauma fine in the judgment because the fine was not orally pronounced during sentencing. This Court should modify the judgment by deleting the fine and removing it from the cost bill.

## ARGUMENT

**The trial court erred in assessing a fine that was not orally pronounced at sentencing. This Court should modify the judgment to delete the fine and remove the fine from the bill of costs.**

When Robinson was initially placed on probation, his sentence was reached via plea agreement. CR at 25. There is no record of a sentencing pronouncement at that time and no fine is listed in the original judgment. CR at 38. Upon revocation, the trial court orally pronounced a sentence of ten years in the Texas Department of Criminal Justice but did not orally pronounce any fine. 1 RR at 49. Robinson's judgment shows a fine of \$100 in addition to the ten years' imprisonment. CR at 83; TEX. CRIM. PROC. art. 102.0185(a). The only fine listed in the bill of costs is the \$100 EMS Trauma Fine. CR at 86.

A defendant's sentence must be orally pronounced in his presence. TEX. CODE. CRIM. PROC. art. 42.03, § 1(a); *Taylor v. State*, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004). The written judgment is the "written declaration and embodiment of the oral pronouncement." *Id.* When there is a conflict between the oral pronouncement and the written judgment, it is the pronouncement that controls. *Taylor*, 131 S.W.3d at 500. A fine is punitive and part of the defendant's sentence, and therefore the trial court must orally pronounce a fine. *Armstrong v. State*, 340 S.W.3d 758, 767 (Tex. Crim. App. 2011).

When a trial court does not orally pronounce a fine as part of a defendant's punishment, any fine in the written judgment is error and should be deleted. *Jones v. State*, 691 S.W.3d 671, 677 (Tex. App.—Houston [14th Dist.] 2024, pet. ref'd); *Carter v. State*, No. 01-23-00739-CR, 2024 WL 3707829, at \*5 (Tex. App.—Houston [1st Dist.] Aug. 8, 2024, no pet.) (mem. op., not designated for publication). When the fine is assessed in error, it is also error to include that fine in the bill of costs. *Jones*, 691 S.W.3d at 679; see *Anastassov v. State*, 664 S.W.3d 815, 823 (Tex. Crim. App. 2022) and *Roberts v. State*, No. 01-20-00226-CR, 2021 WL 497306, at \*7 (Tex. App.—Houston [1st Dist.] Feb. 11, 2021, no pet.) (mem. op., not designated for publication).

**PRAYER**

Appellant Robinson prays this Court remove the EMS trauma fine from his judgment and the criminal bill of costs.

Respectfully submitted,

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### **Certificate of Service**

A true and correct copy of the foregoing brief was e-filed with the First Court of Appeals, was served electronically upon the Appellate Division of the Harris County District Attorney's Office, and was sent on the same date by first-class mail to Appellant.

/s/ Miranda Meador

Miranda Meador

### **Certificate of Compliance**

Pursuant to Rule 9.4(i)(3), undersigned counsel certifies that this brief complies with the type-volume limitations of Tex. R. App. Proc. 9.4(e)(i). Exclusive of the portions exempted by Tex. R. App. Proc. 9.4 (i)(1), this brief contains 8,228 words printed in a proportionally spaced typeface.

/s/ Miranda Meador

Miranda Meador

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