

COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI-EDINBURG

The State of Texas v. Andrew Smith

No. 13-25-00402-CR · No. 13-25-00402-CR · Decided June 11, 2026

SUMMARY

The Texas Thirteenth Court of Appeals reversed and remanded a trial court judgment reducing Andrew Smith's sentence for indecency with a child by sexual contact from fourteen years to three years. The court held that the trial court improperly modified the sentence without conducting a new punishment hearing and orally pronouncing the sentence in the presence of the parties.

CASE DETAILS

COURT	Court of Appeals of Texas, Thirteenth District, Corpus Christi–Edinburg
WRITING FOR THE COURT	Ysmael D. Fonseca; Justice Silva; Justice Peña; Justice Fonseca
JURISDICTION	Texas Court of Appeals, Thirteenth District
DECIDED	June 11, 2026
DOCKET	13-25-00402-CR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed the trial court's order reducing Andrew Smith's sentence after the trial court granted his motion to reconsider sentence without holding a hearing or orally pronouncing the modified sentence in the presence of the parties.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	nonprecedential
PARTIES	The State of Texas v. Andrew Smith

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- Texas criminal procedure
- sentencing
- criminal appeals

QUESTIONS PRESENTED

1. Whether the State waived its right to appeal because it did not specifically object to the trial court's grant of Smith's motion to reconsider sentence.
2. Whether the trial court properly modified Smith's felony sentence without conducting a new punishment hearing and orally pronouncing the modified sentence in the presence of the parties.
3. Whether the trial court's three-year sentence was valid or whether the judgment had to be reversed and remanded for proper assessment of punishment.

HOLDINGS

1. The State did not waive its right to appeal by failing to make a separate objection to the trial court's grant of Smith's motion because the State opposed the motion in a written response and was statutorily authorized to appeal the order.
2. A trial court may not validly modify a felony sentence without holding a new punishment hearing in open court and orally pronouncing the modified sentence in the presence of the defendant and the State.
3. The three-year sentencing judgment was invalid because the trial court lacked authority to modify the sentence without the required statutory procedure; the judgment must be reversed and the case remanded for proper assessment of punishment.

KEY QUOTATIONS

"Because Smith's motion was timely filed after entry of the final judgment, 'the trial court had the authority to set aside' the original sentence here." (at 3)

"Both parties must also be present for resentencing after timely filing of a motion for new trial." (at 3)

"The trial court's inherent authority and plenary power to modify rulings does not create inherent authority to modify a sentence 'without statutory authorization and without the presence of the parties.'" (at 4)

FACTUAL BACKGROUND

Smith pleaded guilty to indecency with a child by sexual contact, a second-degree felony, involving allegations of repeated sexual abuse of a child between July 1, 2017, and September 1, 2020. Following a punishment trial, the trial court imposed a fourteen-year prison sentence. After Smith filed a motion to reconsider sentence comparing his sentence to that of another defendant, the trial court reduced the sentence to three years without a hearing or oral pronouncement in the presence of the parties.

PROCEDURAL HISTORY

A grand jury indicted Smith on seven charges. Smith pleaded guilty to indecency with a child by sexual contact, and after a punishment trial the district court sentenced him to fourteen years' imprisonment while dismissing the other six charges. The district court later granted Smith's motion to reconsider sentence and reduced the sentence to three years without an oral pronouncement or hearing. The State appealed under Texas Code of Criminal Procedure article 44.01(a)(2) and (a)(3).

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court for further proceedings consistent with the opinion, including a proper assessment of punishment through a new punishment hearing in open court in the presence of the parties.

CASES CITED

- State v. Moore, 225 S.W.3d 556, 557 (Tex. Crim. App. 2007)
- Vidaurri v. State, 49 S.W.3d 880, 885–86 (Tex. Crim. App. 2001)
- State v. Davis, 349 S.W.3d 535, 536, 538–40 (Tex. Crim. App. 2011)
- State v. Aguilera, 165 S.W.3d 695, 697–98 (Tex. Crim. App. 2005)
- McClinton v. State, 121 S.W.3d 768, 770–71 (Tex. Crim. App. 2003) (Cochran, J., concurring) (per curiam)
- Duran v. State, No. 04-11-00812-CR, 2012 WL 3834674, at *3–4 (Tex. App.—San Antonio Sept. 5, 2012, no pet.) (mem. op., not designated for publication)

OPINION

PER CURIAM.

NUMBER 13-25-00402-CR COURT OF APPEALS THIRTEENTH DISTRICT OF TEXAS CORPUS CHRISTI – EDINBURG THE STATE OF TEXAS, Appellant, v. ANDREW SMITH, Appellee. ON APPEAL FROM THE 105TH DISTRICT COURT OF KLEBERG COUNTY, TEXAS MEMORANDUM OPINION Before Justices Silva, Peña, and Fonseca Memorandum Opinion by Justice Fonseca Appellee Andrew Smith pleaded guilty to indecency with a child by sexual contact, a second-degree felony, and appellant, the State of Texas, dismissed the other six charges pending against him.

See TEX. PENAL CODE § 21.11(a)(1), (d). After initially sentencing Smith to fourteen years’ imprisonment, following Smith’s motion to reconsider sentence, the trial court granted Smith’s motion and resentenced him to three years.

The State appeals the trial court’s resentencing as an improper abuse of discretion. We reverse and remand because the trial court erred in resentencing Smith without an oral pronouncement of sentence. I. BACKGROUND On March 24, 2023, a grand jury indicted Smith on seven charges, including the relevant charge of indecency with a child by sexual contact. These charges are all related to allegations that Smith had sexually abused a child victim on multiple occasions between July 1, 2017, and September 1, 2020.

The victim eventually reported the abuse leading to Smith’s arrest. On May 1, 2025, Smith entered a guilty plea to the above-described offense. The trial court accepted Smith’s plea and, following a

trial on punishment, sentenced him to fourteen years' imprisonment.

On May 27, 2025, Smith filed a "Motion to Reconsider Sentence" arguing that his sentence was more severe than that of another recently sentenced defendant in Nueces County¹. The State filed a response arguing that Smith failed to articulate a proper legal basis for the trial court to grant a new trial on punishment. Without holding a hearing on this motion, the trial court granted Smith's motion and resentenced him to three years' imprisonment.

The State filed a motion for the trial court to vacate its order, arguing the order was invalid because it was not rendered orally in the presence of the parties, and that Smith's original sentence was appropriate. Smith responded to this motion arguing that disproportionality was a valid legal basis for modifying the sentence.

The trial court did not rule on the State's motion to vacate. This appeal followed. ¹ Nueces County is a neighboring county of Kleberg. ² See TEX. CODE CRIM. PROC. art. 44.01(a)(2), (a)(3) (providing that the State is entitled to appeal an order which "arrests or modifies a judgment" or grants a new trial in a criminal case). II. ANALYSIS The State appeals the trial court's judgment reducing Smith's sentence by two issues, arguing that: (1) it was an abuse of discretion absent the proper evidentiary showing and (2) the trial court failed to follow the proper procedure for modifying a sentence.

Because the second issue is dispositive of the appeal, we decline to address the State's first issue. A. Waiver As a preliminary matter, Smith argues that the State waived its right to appeal the trial court's grant of Smith's motion because it failed "to object to the grant of such motion." However, Smith cites no authority, and we find none, requiring the State to specifically "object" to the grant of a defendant's motion for new trial on sentencing.

Smith relies on *State v. Moore* for this argument, but that matter merely held that a trial court can consider a late-filed motion for new trial if the State does not object to the untimeliness, which is not at issue here. See 225 S.W.3d 556, 557 (Tex. Crim. App. 2007). Smith's other authority, *Vidaurre v. State*, is even less relevant as it did not involve objection to a motion in any regard.

See 49 S.W.3d 880, 885–86 (Tex. Crim. App. 2001). The State is statutorily authorized to appeal the grant of a motion for new trial. See TEX. CODE CRIM. PROC. art. 44.01(a)(3). Further, the State filed a response opposing the motion in this matter.

Therefore, we disagree with Smith's assertion. ³ B. Improper Procedure The Texas Court of Criminal Appeals has clarified that an order granting a motion for reconsideration of a sentence should be treated as an order granting a new trial on punishment. See *State v. Davis*, 349 S.W.3d 535, 538 (Tex. Crim. App. 2011). Following this guidance, we also treat the trial court's order in this matter as an order granting a new trial on punishment.

See *id.* Because Smith’s motion was timely filed after entry of the final judgment, “the trial court had the authority to set aside” the original sentence here. See *id.* However, it is a statutory requirement that “in a felony case, the sentence must be pronounced in the presence of the defendant.” *Id.* (citing TEX. CODE CRIM. PROC. art. 42.03, § 1(a)). “[T]he State must also be present on such an occasion.” *Id.* Both parties must also be present for resentencing after timely filing of a motion for new trial.

Id. at 539 (quoting *State v. Aguilera*, 165 S.W.3d 695, 697–98 (Tex. Crim. App. 2005)). The facts of this matter track those in *Davis* as both involved the trial court granting a reduction in sentence without “an oral pronouncement of the modified sentence in the presence of all of the parties.” *Id.* at 536.

Thus, as in *Davis*, following grant of Smith’s motion, the trial court here should have held “a new punishment hearing in open court in the presence of the parties.” *Id.* at 540. It is not disputed that the trial court failed to do so in this matter.

Therefore, the appropriate remedy is reversal of the trial court’s judgment and remand “for the proper assessment of punishment.” *Id.*; see also *Duran v. State*, No. 04-11-00812-CR, 2012 WL 3834674, at *3–4 (Tex. App.—San Antonio Sep. 5, 2012, no pet.) (mem. op., not designated for publication). 4 Smith concedes that remand is appropriate but only so that the trial court can orally pronounce the three-year sentence that matches the judgment.

But Smith misunderstands the caselaw. The trial court’s judgment imposing a three-year sentence is invalid because of the lack of oral pronouncement of the modified sentence. See *McClinton v. State*, 121 S.W.3d 768, 770–71 (Tex. Crim. App. 2003) (Cochran, J., concurring) (per curiam); see also *Davis*, 349 S.W.3d at 539.

The trial court’s inherent authority and plenary power to modify rulings does not create inherent authority to modify a sentence “without statutory authorization and without the presence of the parties.” *Davis*, 349 S.W.3d at 539 (quoting *McClinton*, 121 S.W.3d at 771).

Therefore, the trial court’s judgment imposing the three-year sentence was without authority. We sustain the State’s second issue. III. CONCLUSION We reverse the trial court’s judgment and remand to the trial court for further proceedings consistent with this opinion. YSMAEL D. FONSECA Justice Do not publish. TEX. R. APP. P. 47.2(b). Delivered and filed on the 11th day of June, 2026.