

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PRECEDENTIAL VALUE	nonprecedential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)