

COURT OF APPEALS FOR THE SIXTH APPELLATE DISTRICT OF TEXAS AT
TEXARKANA

Andrew McCarty v. the State of Texas

No. 06-25-00140-CR · No. No. 06-25-00140-CR · Decided April 17, 2026

SUMMARY

The Sixth Court of Appeals of Texas at Texarkana held that a \$50 fine included in the written judgment but not orally pronounced at sentencing had to be deleted. The court also modified the judgment to clarify that the second-degree felony conviction was enhanced to a first-degree felony and affirmed the judgment as modified.

CASE DETAILS

COURT	Court of Appeals for the Sixth Appellate District of Texas at Texarkana
WRITING FOR THE COURT	Justice Charles van Cleef; Chief Justice Stevens; Justice van Cleef; Justice Rambin
JURISDICTION	Court of Appeals for the Sixth Appellate District of Texas at Texarkana
DECIDED	April 17, 2026
DOCKET	No. 06-25-00140-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	McCarty appealed his conviction and life sentence, challenging a \$50 fine included in the written judgment but not orally pronounced. The State filed a cross-point seeking modification of the judgment's description of the degree of offense.
STANDARD OF REVIEW	The court reviewed the legal effect of the oral pronouncement and written judgment and modified the judgment under Texas Rule of Appellate Procedure 43.2(b).
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; marked Do Not Publish
PARTIES	Andrew McCarty v. The State of Texas

TOPICS

- criminal procedure
- preservation of error
- sentencing
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether McCarty preserved for appellate review his challenge to the \$50 fine that appeared in the written judgment but was not orally pronounced.
2. Whether the written judgment could include a \$50 fine that was not orally pronounced as part of the sentence.
3. Whether the judgment should be modified to state that the second-degree felony conviction was enhanced to a first-degree felony.

HOLDINGS

1. McCarty was not required to object at trial to preserve his appellate challenge because the fine did not appear in the oral pronouncement and therefore there was nothing to object to when sentence was imposed.
2. The \$50 fine had to be deleted from the written judgment because the trial court did not orally assess it as part of McCarty's sentence.
3. The judgment had to be modified to state that McCarty was convicted of a 'SECOND-DEGREE FELONY—ENHANCED TO FIRST DEGREE.'

KEY QUOTATIONS

“Accordingly, we hold that McCarty need not have objected at trial to preserve his challenge on appeal.” (2)

“When there is a conflict between the oral pronouncement of sentence and the sentence in the written judgment, the oral pronouncement controls.” (2)

“Accordingly, since the trial court did not orally assess a fine as part of McCarty’s sentence when guilt was adjudicated, we hold that we must delete the fine from the judgment.” (3)

FACTUAL BACKGROUND

A Lamar County jury found Andrew McCarty guilty of indecency with a child by sexual contact. The trial court orally sentenced him to life imprisonment but did not orally assess a fine. The written judgment nevertheless listed a \$50 fine payable to the Children's Advocacy Center and separately described the offense as a second-degree felony, although a prior felony enhancement had been found true.

PROCEDURAL HISTORY

A Lamar County jury found McCarty guilty of indecency with a child by sexual contact. After McCarty elected to have the trial court assess punishment, the trial court sentenced him to life imprisonment. The appellate court held that the fine was improperly included in the written judgment, modified the judgment to delete it and to reflect enhancement from a second-degree felony to a first-degree felony, and affirmed as modified.

DISPOSITION

affirmed

CASES CITED

- Johnson v. State, 423 S.W.3d 385, 390-91 (Tex. Crim. App. 2014)
- Taylor v. State, 131 S.W.3d 497, 500, 502 (Tex. Crim. App. 2004)

OPINION

Andrew McCarty v. the State of Texas

PER CURIAM.

In the Court of Appeals Sixth Appellate District of Texas at Texarkana No. 06-25-00140-CR ANDREW MCCARTY, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the 6th District Court Lamar County, Texas Trial Court No. 31152 Before Stevens, C.J., van Cleef and Rambin, JJ. Memorandum Opinion by Justice van Cleef

MEMORANDUM OPINION

A Lamar County jury found Appellant, Andrew McCarty, guilty of indecency with a child by sexual contact. See TEX. PENAL CODE ANN. § 12.42 (Supp.), § 21.11(d). McCarty elected to have the trial court assess punishment, and it sentenced McCarty to life imprisonment. On appeal, McCarty asserts that the trial court's written judgment of conviction includes a \$50.00 fine payable to the Children's Advocacy Center that was not included in the oral pronouncement of his sentence. McCarty argues that the \$50.00 fine must be deleted. In a cross-point, the State requests a modification of the written judgment to state that the "Degree of Offense" was a "SECOND DEGREE FELONY—ENHANCED TO FIRST DEGREE." Because we find that the trial court's written judgment incorrectly included a \$50.00 fine and the "Degree of Offense" should reflect the conviction was a second-degree felony enhanced to the first degree, we modify the trial court's judgment and affirm as modified. I. Error Preservation At the outset, we address the State's argument that this issue has not been preserved for our review. The State asserts that McCarty did not object at sentencing. The State argues that the situation here is different from that in Johnson v. State, wherein the Texas Court of Criminal Appeals held that an appellant could raise the issue of improperly assessed court costs for the first time on appeal, because here, the State argues that McCarty is challenging the imposition of a "fine"—not an itemized court cost. See Johnson v. State, 423 S.W.3d 385, 391 (Tex. Crim. App. 2014). We disagree with the State's application of Johnson. In Johnson, the Court of Criminal Appeals noted that at the time the sentence was imposed orally, there was nothing to complain of because the challenged cost had not been assessed against the defendant. Id. at 390. Here, like in Johnson, McCarty's orally pronounced sentence did not include the assessment of a \$50.00 fine to be paid to the Children's Advocacy Center, and therefore, he had nothing to object to at trial. See id. Accordingly, we hold that McCarty need not have objected at trial to preserve his challenge on appeal. See id. II. Oral

Pronouncement Controls “A defendant’s sentence must be pronounced orally in his presence. The judgment, including the sentence assessed, is just the written declaration and embodiment of that oral pronouncement. When there is a conflict between the oral pronouncement of sentence and the sentence in the written judgment, the oral pronouncement controls.” *Taylor v. State*, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004) (footnotes omitted) (citations omitted). At the time of sentencing, the trial court orally stated, “McCarty, the Court sentences you to life in prison. Your sentence begins today. You will receive any credit to which you’re lawfully entitled.” No fine was assessed at that time. The judgment, however, reflects the life sentence, but also assesses under “Fines” a “\$50.00 CHILDRENS ADVOCACY CENTER” fine. It is that fine that McCarty complains of on appeal, and we agree that it must be deleted. Contrary to the State’s position in its preservation argument, the State argues that the \$50.00 amount was not a “fine” but rather a “cost of court” and therefore it was not punitive, but a “consequence of the defendant’s conviction.” While the State purports to support the assessment of the “court cost[.]” through the record, the judgment specifically assesses the \$50.00 fee under the “Fines” section, and includes other, separate amounts under “Court Costs” and “Reimbursement Fees”—thus the State’s argument fails in that regard. Accordingly, since the trial court did not orally assess a fine as part of McCarty’s sentence when guilt was adjudicated, we hold that we must delete the fine from the judgment. See *Taylor*, 131 S.W.3d at 502; TEX. R. APP. P. 43.2(b). We sustain McCarty’s sole issue. III. Further Modification As the State points out, the judgment also describes the “Degree of Offense” as a second-degree felony. The enhancement paragraph, however, was found to be true after McCarty pled true. If a defendant is convicted of a second-degree felony and it is shown that “the defendant has previously been finally convicted of a felony other than a state jail felony[.] . . . the defendant shall be punished for a felony of the first degree.” TEX. PENAL CODE ANN. § 12.42(b). Accordingly, we modify the judgment to state under the “Degree of Offense” that McCarty was convicted of a “SECOND-DEGREE FELONY—ENHANCED TO FIRST DEGREE.” See TEX. R. APP. P. 43.2(b). IV. Conclusion The judgment of the trial court is modified to delete the requirement that McCarty pay the \$50.00 fine and to reflect that the “Degree of Offense” for which McCarty was convicted was a “SECOND-DEGREE FELONY—ENHANCED TO FIRST DEGREE.”

4 We affirm the trial court’s judgment as modified. Charles van Cleef Justice Date Submitted: March 23, 2026 Date Decided: April 17, 2026 Do Not Publish 5