

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PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; marked Do Not Publish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)

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