

COURT OF APPEALS FOR THE SECOND APPELLATE DISTRICT OF TEXAS
AT FORT WORTH

Kaley Brynn Johnston v. The State of Texas

No. 02-25-00204-CR · No. No. 02-25-00204-CR · Decided June 11, 2026

SUMMARY

The Texas Court of Appeals for the Second District affirmed Kaley Brynn Johnston’s conviction for possession of methamphetamine, modifying the written judgment to delete a \$1,385 restitution fee that was not orally pronounced at sentencing. The court granted appointed counsel’s motion to withdraw under *Anders v. California* and concluded that the appeal was otherwise frivolous.

CASE DETAILS

COURT	Court of Appeals for the Second Appellate District of Texas at Fort Worth
WRITING FOR THE COURT	Dabney Bassel; Sudderth, C.J.; Kerr, J.; Bassel, J.
JURISDICTION	Texas Court of Appeals, Second Appellate District at Fort Worth
DECIDED	June 11, 2026
DOCKET	No. 02-25-00204-CR
DISPOSITION	other
PROCEDURAL POSTURE	Johnston appealed her conviction and sentence in an <i>Anders</i> appeal. Appointed appellate counsel moved to withdraw and filed an <i>Anders</i> brief asserting that the appeal was frivolous. The court independently reviewed the record and modified the written judgment to delete an improperly imposed restitution fee.
STANDARD OF REVIEW	In an <i>Anders</i> appeal, the appellate court independently examines the record for any arguable ground for relief before granting counsel's motion to withdraw. The court reviews whether the written judgment conforms to the oral pronouncement of sentence.
PRECEDENTIAL VALUE	unpublished
PARTIES	Kaley Brynn Johnston v. The State of Texas

TOPICS

- criminal procedure
- appellate procedure
- sentencing
- restitution criminal
- remedies

PRACTICE AREAS

criminal procedure

appellate procedure

sentencing

restitution criminal

QUESTIONS PRESENTED

1. Whether counsel's Anders brief and motion to withdraw satisfied the applicable requirements and whether independent review revealed any arguable ground for relief.
2. Whether a restitution fee that was not included in the oral pronouncement of sentence could properly appear in the written judgment.
3. Whether the appellate court could reform the judgment in an Anders appeal by deleting the improperly imposed restitution fee.

HOLDINGS

1. After appointed counsel files a compliant Anders brief and motion to withdraw asserting that the appeal is frivolous, the appellate court must independently examine the record for any arguable ground for relief before granting the motion to withdraw.
2. When the oral pronouncement of sentence and the written judgment differ, the oral pronouncement controls; a restitution fee not included in the oral pronouncement is improperly imposed and must be deleted from the written judgment.
3. An appellate court has authority to reform a judgment in an Anders appeal and affirm the judgment as reformed.

KEY QUOTATIONS

“When the oral pronouncement of sentence and the written judgment vary, the oral pronouncement controls.”
(at 3)

“We grant counsel’s motion to withdraw and affirm the trial court’s judgment as modified.” (at 4)

FACTUAL BACKGROUND

A jury found Kaley Brynn Johnston guilty of possessing one or more but less than four grams of methamphetamine, a third-degree felony. The jury assessed seven years' imprisonment, and the trial court orally pronounced that sentence. The written judgment additionally imposed a \$1,385 restitution fee, although neither the jury assessed it nor the trial court included it in the oral pronouncement.

PROCEDURAL HISTORY

A jury found Johnston guilty of third-degree-felony possession of one to four grams of methamphetamine and assessed seven years' imprisonment. The trial court pronounced the jury-assessed sentence, but the written judgment added a \$1,385 restitution fee that was not orally pronounced. On appeal, counsel filed an Anders brief and motion to withdraw; Johnston filed no pro se response and the State filed no response. The court granted withdrawal, deleted the restitution fee, and affirmed the judgment as modified.

DISPOSITION

other

CASES CITED

- Anders v. California, 386 U.S. 738, 744–45, 87 S. Ct. 1396, 1400 (1967)
- Stafford v. State, 813 S.W.2d 503, 509–11 (Tex. Crim. App. 1991)
- Kelly v. State, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014)
- Penson v. Ohio, 488 U.S. 75, 82–83, 109 S. Ct. 346, 351 (1988)
- Taylor v. State, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004)
- Coffey v. State, 979 S.W.2d 326, 328 (Tex. Crim. App. 1998)
- Ex parte Madding, 70 S.W.3d 131, 135 (Tex. Crim. App. 2002)
- Bray v. State, 179 S.W.3d 725, 726 (Tex. App.—Fort Worth 2005, no pet.) (en banc)
- Alexander v. State, 301 S.W.3d 361, 364 (Tex. App.—Fort Worth 2009, no pet.)
- Bledsoe v. State, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005)
- Meza v. State, 206 S.W.3d 684, 685 n.6 (Tex. Crim. App. 2006)

OPINION

PER CURIAM.

In the Court of Appeals Second Appellate District of Texas at Fort Worth

No. 02-25-00204-CR _____

KALEY BRYNN JOHNSTON, Appellant V. THE STATE OF TEXAS On Appeal from the 355th District Court Hood County, Texas Trial Court No. CR16291 Before Sudderth, C.J.; Kerr and Bassel, JJ. Memorandum Opinion by Justice Bassel MEMORANDUM OPINION A jury found Appellant Kaley Brynn Johnston guilty of the third-degree-felony offense of possession of a controlled substance, methamphetamine, of one gram or more but less than four grams.

See Tex. Health & Safety Code §§ 481.115(a), (c), .102(6). The jury assessed punishment at seven years' imprisonment in the Institutional Division of the Texas Department of Criminal Justice. See Tex. Penal Code § 12.34 (stating that the punishment range for a third-degree-felony offense is two to ten years' confinement and up to a \$10,000 fine).

The trial court pronounced the sentence as assessed by the jury. The written judgment, however, included a restitution fee that was not orally pronounced. Because we will determine that the restitution fee ordered in the written judgment was improperly imposed, we will delete it and affirm the trial court's judgment as modified. Johnston's court-appointed appellate counsel has filed a motion to withdraw as counsel and a supporting brief in which she avers that, in her professional opinion, this appeal is frivolous.

Counsel's brief professionally evaluates the appellate record and demonstrates why no arguable grounds for relief exist; the brief and withdrawal motion thus meet the requirements of *Anders v. California*, 386 U.S. 738, 744–45, 87 S. Ct. 1396, 1400 (1967). See *Stafford v. State*, 813 S.W.2d 503, 509–10 (Tex. Crim. App. 1991). 2 Counsel also complied with the requirements of *Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex.

Crim. App. 2014). 1 We sent Johnston a letter informing her that her court-appointed counsel had filed a motion to withdraw and an *Anders* brief and that if she wished to file a pro se response to counsel's *Anders* brief, it must be filed by February 2, 2026. Johnston did not file a pro se brief in response. Likewise, the State did not file a response.

After an appellant's court-appointed counsel files a motion to withdraw on the ground that an appeal is frivolous and fulfills *Anders*'s requirements, we must independently examine the record for any arguable ground that may be raised on the appellant's behalf. See *Stafford*, 813 S.W.2d at 511. Only then may we grant counsel's motion to withdraw. See *Penson v. Ohio*, 488 U.S. 75, 82–83, 109 S. Ct.

346, 351 (1988). In *Kelly*, the Court of Criminal Appeals listed additional tasks an appointed 1 lawyer who files an *Anders* brief must perform: He must write a letter to (1) notify his client of the motion to withdraw and the accompanying *Anders* brief, providing him a copy of each, (2) inform him of his right to file a pro se response and of his right to review the record preparatory to filing that response, and (3) inform him of his pro se right to seek discretionary review should the court of appeals declare his appeal frivolous.

To this list we now add that appointed counsel who files a motion to withdraw and *Anders* brief must also (4) take concrete measures to initiate and facilitate the process of actuating his client's right to review the appellate record, if that is what his client wishes. 436 S.W.3d at 319 (footnote omitted).

The court also required counsel to supply the appellant with the mailing address for the court of appeals. *Id.* at 320. 3 As is our duty, we have carefully reviewed counsel's brief and the appellate record. The record shows that the jury did not assess, and the trial court did not include in its oral pronouncement of Johnston's sentence, a restitution fee. Yet, the written judgment reflects a \$1,385 restitution fee.

A trial court's pronouncement of sentence is oral, while the judgment, including the sentence assessed, is merely the written declaration and embodiment of that oral pronouncement. See Tex. Code Crim. Proc. art. 42.03, § 1 (providing that "sentence shall be pronounced in the defendant's presence"). When the oral pronouncement of sentence and the written judgment vary, the oral pronouncement controls.

Taylor v. State, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004); Coffey v. State, 979 S.W.2d 326, 328 (Tex. Crim. App. 1998). The rationale for this rule is that “the imposition of sentence is the crucial moment when all of the parties are physically present at the sentencing hearing and able to hear and respond to the imposition of sentence. Once he leaves the courtroom, the defendant begins serving the sentence imposed.” See Ex parte Madding, 70 S.W.3d 131, 135 (Tex.

Crim. App. 2002). Here, because it was not part of the trial court’s oral pronouncement of Johnston’s sentence, we modify the written judgment to delete the \$1,385 restitution fee. See Bray v. State, 179 S.W.3d 725, 726 (Tex. App.—Fort Worth 2005, no pet.) (en banc) (holding that an appellate court has the authority to reform a judgment in an Anders appeal and to affirm that judgment as reformed); Alexander v. State, 301 S.W.3d 4 361, 364 (Tex.

App.—Fort Worth 2009, no pet.) (holding order of restitution must be included in the oral pronouncement to be valid). Except for this modification to the judgment, we agree with counsel that an appeal would be wholly frivolous and without merit; we find nothing in the appellate record that otherwise arguably might support an appeal. See Bledsoe v. State, 178 S.W.3d 824, 827–28 (Tex.

Crim. App. 2005); see also Meza v. State, 206 S.W.3d 684, 685 n.6 (Tex. Crim. App. 2006). We grant counsel’s motion to withdraw and affirm the trial court’s judgment as modified. /s/ Dabney Bassel Dabney Bassel Justice Do Not Publish Tex. R. App. P. 47.2(b) Delivered: June 11, 2026 5