



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. PD-1449-16

DOUGLAS PAUL CARTER, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S TEXAS PETITION FOR DISCRETIONARY REVIEW
FROM THE SECOND COURT OF APPEALS
TARRANT COUNTY**

WALKER, J., delivered the opinion of the Court in which KELLER, P.J., and KEASLER, HERVEY, ALCALA, RICHARDSON, NEWELL, and KEEL, JJ., joined. YEARY, J., dissented.

OPINION

Appellant Douglas Paul Carter was convicted of possessing one gram or more, but less than four grams, of a controlled substance, namely heroin. *See* Tex. Health & Safety Code Ann. §§ 481.115(a), (c); 481.102(2) (West 2010 & Supp. 2015). After conviction and sentence, court costs were imposed including a \$133 consolidated court cost. *See* Tex. Local Gov't Code Ann. § 133.102(a)(1) (West 2008 & Supp. 2015). On appeal, Appellant claimed that portions of the section

133.102 consolidated court cost relating to “law enforcement officers standards and education,” “comprehensive rehabilitation,” and “abused children’s counseling” were unconstitutional. The court of appeals rejected the claim. On December 22, 2016, Appellant filed a petition for discretionary review, asking us:

Did the court of appeals err in holding that Section 133.102(a)(1) of the Texas Local Government Code by which the “consolidated court cost” was assessed is not facially unconstitutional?

Because two of Appellant’s challenged funds were already being challenged in other cases before the Court, we held Appellant’s petition pending the resolution of those cases. *See Salinas v. State*, 523 S.W.3d 103 (Tex. Crim. App. 2017) (challenging “comprehensive rehabilitation” and “abused children’s counseling”); *Penright v. State*, — S.W.3d —, No. PD-1671-15, 2017 WL 4169069 (Tex. Crim. App. Sept. 20, 2017) (challenging “comprehensive rehabilitation”).

In *Salinas*, we held that the “comprehensive rehabilitation” and the “abused children’s counseling” portions of the section 133.102 consolidated court cost were facially unconstitutional in violation of the Separation of Powers provision of the Texas Constitution. *Salinas*, 523 S.W.3d at 109-10. We also held that those unconstitutional portions were severable from the remainder of the section 133.102 consolidated court cost and that the fee assessed should be reduced pro rata according to the percentage allocated to the impermissible accounts. *Id.* at 111.

We further held that our Separation of Powers holding would apply retroactively only to a “defendant who has raised the appropriate claim in a petition for discretionary review before the date of this opinion, if that petition is still pending on the date of this opinion and if the claim would otherwise be properly before us on discretionary review.” *Id.* at 113.

In *Penright*, we applied *Salinas*’s retroactivity holding to Carlton Penright’s challenge to the

“comprehensive rehabilitation” portion of the cost. *Penright*, 2017 WL 4169069, at *1. His petition was filed on February 8, 2016, before *Salinas* was handed down on March 8, 2017, was pending on discretionary review at the time *Salinas* was handed down, and was otherwise properly before the Court on discretionary review. We accordingly modified the judgment to change the \$133 consolidated court cost in Penright’s case to \$119.94. *Id.*

After delivering our opinions in *Salinas* and *Penright*, we granted Appellant’s petition. In his brief, he “restates” his ground for review as:

The court of appeals erred in holding that the “Comprehensive Rehabilitation” fee and the “Abused Children’s Counseling” fee assessed pursuant to Section 133.102(a)(1) of the Texas Local Government Code were not facially unconstitutional.

Appellant’s brief also formulates his argument based on *Salinas*. Appellant argues that his petition falls within *Salinas*’s retroactivity holding, that he is specifically raising the same arguments presented in *Salinas*,¹ and that he is entitled to the same remedy as in *Salinas*, which is to modify the judgment to delete the costs we found to be unconstitutional. The State, in response, filed a letter with the Court conceding that *Salinas* applies to this case. The State agrees that we should modify the judgment in accordance with *Salinas*. We agree with the parties.

Appellant’s challenge to the “comprehensive rehabilitation” and the “abused children’s counseling” portions of the consolidated court cost was raised before the date of the *Salinas*

¹ As for Appellant’s challenge in his petition to the “law enforcement officers standards and education” portion of the consolidated court cost, Appellant appears to have abandoned his complaint. In his brief, Appellant mentions the “law enforcement officers standards and education” portion only while describing the decision of the court of appeals. His brief makes the case and argues that we should simply apply *Salinas* to his challenge to the “comprehensive rehabilitation” and the “abused children’s counseling” portions of the cost. Accordingly, only the challenge to the “comprehensive rehabilitation” and the “abused children’s counseling” portions of the cost are before us today.

opinion—his petition for discretionary review was filed on December 22, 2016 and *Salinas* was delivered on March 8, 2017. *Salinas*, 523 S.W.3d at 103. Appellant’s petition was still pending on that date, and his claim was otherwise properly before us on discretionary review. Thus, our decision in *Salinas* applies retroactively to Appellant’s claim.

The portion of the fee allocated to “comprehensive rehabilitation” was 9.8218 percent. Tex. Local Gov’t Code Ann. § 133.102(e)(6) (West 2008 & Supp. 2015).² The portion of the fee allocated to “abused children’s counseling” was 0.0088 percent. *Id.* § 133.102(e)(1). Combined, the two portions account for 9.8306 percent of the fee. That percentage of the \$133 cost in Appellant’s case is \$13.07. Subtracting that amount from the \$133 fee yields a cost of \$119.93. Consequently, we modify the trial court’s judgment to change the \$133 consolidated court cost to \$119.93.

Delivered: February 28, 2018
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² After our decision in *Salinas*, the Legislature amended Local Government Code section 133.102(e) to remove the “abused children’s counseling” and “comprehensive rehabilitation” accounts we identified as unconstitutional. Act of May 18, 2017, 85th Leg., R.S., ch. 966, § 1, 2017 Tex. Sess. Law Serv. 3917 (amending Tex. Local Gov’t Code § 133.102). The Legislature reallocated the percentages for the two accounts to the “fair defense account.” *Id.* Under the current statute, “crime stoppers assistance” is now (e)(1), and “criminal justice planning” is now (e)(6). Tex. Local Gov’t Code Ann. § 133.102(e)(1), (e)(2) (West 2008 & Supp. 2017).