



**In The  
Court of Appeals  
Sixth Appellate District of Texas at Texarkana**

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No. 06-19-00240-CR

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RAFAEL GUERRA, Appellant

V.

THE STATE OF TEXAS, Appellee

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On Appeal from the 188th District Court  
Gregg County, Texas  
Trial Court No. 47788-A

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Before Morriss, C.J., Burgess and Stevens, JJ.  
Memorandum Opinion by Chief Justice Morriss

## MEMORANDUM OPINION

A Gregg County jury convicted Rafael Guerra of driving while intoxicated (DWI), with two or more prior DWI convictions,<sup>1</sup> and possession of a controlled substance, methamphetamine, in an amount of one gram or more, but less than four grams.<sup>2</sup> At the punishment hearing, Guerra pled “not true” to two felony enhancement allegations, but the jury found the enhancement allegations true and sentenced Guerra to ninety-nine years’ imprisonment on each conviction.

In this appeal,<sup>3</sup> Guerra appeals his conviction for possession of a controlled substance and complains that the trial court erred in giving an incorrect jury instruction on the application of parole, in entering a written judgment reciting that Guerra pled “true” to each of the felony enhancement allegations, and in entering an ex parte order to withdraw funds from his inmate trust account. We find that (1) Guerra was not harmed by the jury instruction and that (2) we have no jurisdiction to consider Guerra’s complaint regarding withdrawing funds from his inmate account but that (3) the judgment must be modified. Therefore, we modify the judgment to reflect that Guerra pled “not true” to the two felony enhancement allegations, and we affirm the judgment as so modified.

### *(1) Guerra Was Not Harmed by the Jury Instruction*

Guerra asserts that he suffered egregious harm because of the trial court’s erroneous jury instruction regarding the application of parole. In companion cause number 06-19-00239-CR,

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<sup>1</sup>See TEX. PENAL CODE ANN. § 49.09(b)(2) (Supp.).

<sup>2</sup>See TEX. HEALTH & SAFETY CODE ANN. § 481.115(c).

<sup>3</sup>In a companion appeal, our cause number 06-19-00239-CR, Guerra appeals his conviction for DWI with two or more prior DWI convictions.

Guerra raised this same issue in his appeal from a conviction for DWI, with two or more DWI convictions. We addressed this issue in detail in our opinion of this date on Guerra's appeal in cause number 06-19-00239-CR. For the reasons stated therein, we likewise overrule this point of error here.

(2) *We Have No Jurisdiction to Consider Guerra's Complaint Regarding Withdrawing Funds from His Inmate Account*

Guerra also complains that he was denied due process of law when the trial court entered an ex parte order to withdraw funds from his inmate trust account without notice to Guerra. Because we do not have jurisdiction to consider this issue in this appeal, we cannot address the merits of Guerra's argument.

After Guerra had filed his notice of appeal in this case, the trial court entered its Order to Withdraw Funds from Guerra's inmate trust account. The order was entered pursuant to Section 501.014 of the Texas Government Code. *See* TEX. GOV'T CODE ANN. § 501.014(e) (Supp.). Both the Texas Supreme Court and the Texas Court of Criminal Appeals have held that challenges to orders to withdraw funds entered pursuant to Section 501.014(e) are civil matters. *Johnson v. Tenth Judicial Dist. Court of Appeals at Waco*, 280 S.W.3d 866, 871–72 (Tex. Crim. App. 2008) (orig. proceeding); *Harrell v. State*, 286 S.W.3d 315, 318–19 (Tex. 2009).

Guerra's notice of appeal states that he "wishes to appeal from the conviction to the Sixth Court of Appeals on errors raised by written motion and ruled on before trial and on errors arising during and subsequent to trial." This clearly invokes our criminal appellate jurisdiction. *See* TEX. R. APP. P. 25.2; *Lee v. State*, No. 06-14-00112-CR, 2015 WL 1570200, at \*4 n.3 (Tex. App.—

Texarkana Apr. 9, 2015, pet. ref'd.) (mem. op., not designated for publication).<sup>4</sup> “Proceedings under Government Code section 501.014(e) to recover court fees and costs assessed against inmates are civil in nature and are not part of the underlying criminal case.” *Perez v. State*, 424 S.W.3d 81, 89 (Tex. Crim. App. 2014) (Alcalá, J., concurring). Guerra has not filed a notice of appeal that states the date of the order to withdraw funds, as is required to invoke our civil appellate jurisdiction. See TEX. R. APP. P. 25.1(d)(2) (requiring the notice of appeal in a civil matter to “state the date of the judgment or order appealed from”); *Lee*, 2015 WL 1570200, at \*4 n.3. Consequently, we do not have jurisdiction to address this issue in this appeal.

(3) *The Judgment Must Be Modified*

Guerra also asserts that the written judgment entered by the trial court should be corrected to reflect that he pled “not true” to the two punishment enhancement paragraphs. We agree.

We have the authority to modify the judgment to make the record speak the truth when it has been brought to our attention by any source. TEX. R. APP. P. 43.2(b); *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992). “Our authority to reform incorrect judgments is not dependent on the request of any party, nor does it turn on a question of whether a party has or has not objected in trial court; we may act sua sponte and may have a duty to do so.” *Rhoten v. State*, 299 S.W.3d 349, 356 (Tex. App.—Texarkana 2009, no pet.) (citing *Asberry v. State*, 813 S.W.2d 526, 531 (Tex. App.—Dallas 1991, pet. ref'd)); see *French*, 830 S.W.2d at 609.

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<sup>4</sup>“Although unpublished opinions have no precedential value, we may take guidance from them ‘as an aid in developing reasoning that may be employed.’” *Rhymes v. State*, 536 S.W.3d 85, 99 n.9 (Tex. App.—Texarkana 2017, pet. ref'd) (quoting *Carrillo v. State*, 98 S.W.3d 789, 794 (Tex. App.—Amarillo 2003, pet. ref'd)).

Under the sections entitled “Plea to 1<sup>st</sup> Enhancement Paragraph” and “Plea to 2<sup>nd</sup> Enhancement Paragraph,” the trial court’s written judgment reflects the pleas as “TRUE.” However, the record shows that, at the punishment hearing, Guerra pled “not true” to each of the enhancement paragraphs. Therefore, we will modify the judgment to reflect Guerra’s pleas. We sustain this issue.

We modify the sections entitled “Plea to 1<sup>st</sup> Enhancement Paragraph” and “Plea to 2<sup>nd</sup> Enhancement Paragraph” in the trial court’s judgment by changing “TRUE” to “NOT TRUE” in each section. For the reasons stated, we affirm the trial court’s judgment, as modified.

Josh R. Morriss, III  
Chief Justice

Date Submitted: July 2, 2020  
Date Decided: July 6, 2020

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