

In the absence of evidence demonstrating financial resources to offset the costs of legal services, a defendant who's been found indigent, presumably remains indigent. [Maza v. State](15-2-5)

On June 11, 2015, the Corpus Christi Court of Appeals held that when once a lawyer has been appointed by the trial court, that court must hear evidence and determine whether a material change in the defendant's financial circumstances has occurred (since his initial declaration of indigence) before assessing attorney's fees.

¶ 15-2-5. **Maza v. State**, MEMORANDUM, No. 13-14-00128-CR, 2015 WL 3637821 (Tex.App.-Corpus Christi, June 11, 2015).

Facts: Maza was indicted on two counts of child molestation. Pursuant to a plea agreement, Maza pleaded guilty to aggravated sexual assault of a child, and the State abandoned an indecency with a child charge. On August 27, 2007, the trial court placed Maza on deferred-adjudication community supervision for seven years and assessed a \$1000.00 fine. The State filed a motion to revoke Maza's community supervision on September 20, 2013. At the revocation hearing, after Maza pleaded true to all of the alleged violations, the trial court found all allegations to be true, adjudicated Maza's guilt, revoked his community supervision, and assessed punishment at confinement for thirty-five years in the Institutional Division of the Texas Department of Criminal Justice. See *id.* § 12.32(a) (“An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years.”). The trial court also assessed attorney's fees of \$1600.00 against Maza. This appeal followed.

Held: Affirmed as modified

Memorandum Opinion: Maza argues, by his second issue, that the trial court abused its discretion when it assessed attorney's fees against him, an indigent offender. Although the record does not reflect an express finding of Maza's indigence, the trial court appointed counsel to represent him. See TEX.CODE CRIM. PROC. Ann. art. 1.051 (West, Westlaw through 2013 3d C.S.).

Article 26.05(g) of the code of criminal procedure provides trial courts with discretionary authority to order reimbursement of appointed attorney's fees when the “defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided[.]” See *id.* art. 26.05(g) (West, Westlaw through 2013 3d C.S.). Before doing so, however, the trial court must hear evidence and determine whether a material change in the defendant's financial circumstances has occurred since his initial declaration of indigence. See *Mayer v. State*, 309 S.W.3d 552, 556 (Tex.Crim.App.2010). The trial court made no such determination in this case. See *id.*

In the absence of evidence demonstrating Maza's financial resources to offset the costs of legal services, the State concedes, and we agree, that the trial court erred in assessing attorney's fees against Maza, who presumably remained indigent. See *id.* We sustain Maza's second issue.

Conclusion: We modify the trial court's judgment to delete the \$1600.00 in attorney's fees assessed against Maza. We affirm the trial court's judgment as modified.