IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1283-15

MILTON RAY CRAWFORD, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW FROM THE TENTH COURT OF APPEALS BRAZOS COUNTY

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

O P I N I O N

Pleading guilty to the offense of sexual assault in 1984, Appellant was convicted and later required to register as a sex offender. Twice after that, in 2007 and then again in 2009, he was convicted of the felony offense of failing to comply with sex-offender-registration requirements. In 2013, he was once again indicted for failing to comply with sex-offender-

registration requirements, a third degree felony under Article 62.102(b)(2) of the Code of Criminal Procedure. TEX. CODE CRIM. PROC. art. 62.102(b)(2). Moreover, the 2013 indictment alleged the two previous felony sex-offender-registration offenses in enhancement paragraphs, to bring Appellant within the ambit of Section 12.42(d) of the Penal Code and thereby raise his exposure to a term of life, or not more than 99 years or less than 25 years, in the penitentiary. Appellant objected to the application of Section 12.42(d) to enhance his punishment, but nevertheless pled true to the enhancement paragraphs. A jury found them to be true and assessed his punishment at a term of 85 years in the penitentiary.

On appeal, Appellant again challenged the legality of his enhanced sentence. He argued that the State could not use prior felony offenses for failure to comply with sex-offender-registration requirements to punish him as a habitual felony offender for a subsequent sex-offender-registration offense under Section 12.42(d) of the Penal Code.[1] As he did in the trial court, he pointed out that the sex-offender-registration scheme has its own specialized provision for enhancing a sex-offender-registration offense with prior sex-offender-registration infractions. Article 62.102(c) of the Code of Criminal Procedure provides that, if it is "shown at the trial" that a sex-offender-registration offender has been previously convicted of a sex-offender-registration offense, then his punishment "is increased

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[1] *See* TEX. PENAL CODE § 12.42(d) ("[I]f it is shown on the trial of a felony offense other than a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted to two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant 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 25 years.").

to the punishment for the next highest degree of felony."[2] Appellant contends that he should have been punished under this provision, which would have exposed him to the range of punishment for a second degree offender, a range of only two to twenty years. TEX. PENAL CODE § 12.33(a). Because he received a sentence greatly in excess of that range, Appellant argued, he was harmed. In an unpublished opinion, the Tenth Court of Appeals rejected Appellant's argument. *Crawford v. State*, No. 10-14-00127-CR, 2015 WL 5656004, at *1-3 (Tex. App.—Waco 2015) (mem. op., not designated for publication).

We granted Appellant's petition for discretionary review in order to review Appellant's contention that the court of appeals erred to hold that the State could invoke Section 12.42(d) to punish him as a habitual offender. Appellant argues that, at least when it comes to enhancing sex-offender-registration offenses with prior sex-offender-registration offenses, Article 62.102(c) covers the field—to the exclusion of any application of Section 12.42(d). We disagree and will affirm the judgment of the court of appeals.

It is true that we have held that, when the Legislature has enacted a more specific enhancement scheme, the more specific scheme will control over the general enhancement regime of Section 12.42. For example, in *Rawlings v. State*, 602 S.W.2d 268 (Tex. Crim. App. 1980), we held that a conviction for theft of property having a value of less than $200 could only be enhanced with other theft convictions under the auspices of a specific

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[2] *See* TEX. CODE CRIM. PROC. art. 62.102(c) ("If it is shown at the trial of a person for an offense . . . under this article that the person has previously been convicted of *an offense* . . . under this article, the punishment for the offense . . . is increased to the punishment for the next highest degree of felony.") (emphasis added).

enhancement provision in the theft statute. There are two notable features of *Rawlings* that are relevant to the issue in the present case. First, we insisted that the existence of a specific regime for enhancing a theft conviction with another theft conviction did not mean that the general enhancement provision contained in Section 12.42 could not apply to enhance a felony theft of property less than $200 in value with some *other* prior felony conviction, such as murder. *Id*. at 269, 271. Extrapolating from the holding in *Rawlings*, the mere existence of Article 62.102(c) does not prohibit the enhancement of a sex-offender-registration offense with prior non–sex-offender-registration offenses, such as murder or burglary, under Section 12.42. Indeed, Appellant does not contend otherwise.

The second, and more salient, feature to note about *Rawlings* is that the specific enhancement provision in the theft-of-less-than-$200 statute expressly addressed how to enhance with *multiple* prior convictions for theft. The specific enhancement provision in the theft statute, at issue in *Rawlings*, explicitly set out how to enhance the punishment for a conviction for theft of property valued at less than $200 where "the defendant has been previously convicted *two or more times* of any grade of theft[.]" *Id*. at 270 (quoting then-Section 31.03(d) of the Penal Code). We analogized to other specific enhancement provisions that likewise addressed the enhancement of particular offenses when the defendant had previously been convicted one or more times of that same particular offense. *Id*. at 270-71; *see Edwards v. State*, 166 Tex. Crim. R. 301, 313 S.W.2d 618 (1958) (holding that the general enhancement provisions did not control where the D.W.I. statute provided its own

enhancement scheme making "each and every subsequent such violation" a felony subject to five years' incarceration); *Heredia v. State*, 468 S.W.2d 833 (Tex. Crim. App. 1971) (holding that the specific enhancement regime providing the grade of offense for violating the former Narcotic Drug Act "upon the second or any subsequent conviction therefor" controlled over the predecessor to Section 12.42's general enhancement scheme).

By contrast, Article 62.102(c) only addresses how to enhance a subsequent sex-offender-registration offense with a single prior sex-offender-registration felony offense. It only speaks to how to enhance a sex-offender-registration offense when the offender "has previously been convicted of *an offense* . . . under this article[.]" TEX. CODE CRIM. PROC. art. 62.102(c) (emphasis added). It does not expressly say how a sex-offender-registration defendant may be enhanced in the event that he should have incurred *multiple* prior sex-offender-registration offenses.

Appellant maintains that Article 62.102(c) nevertheless controls because it at least implicitly addresses the enhancement of sex-offender-registration convictions with *multiple* prior sex-offender-registration convictions. Appellant's argument, as we understand it, crystalizes in one proposition: Article 62.102(c) of the Code of Criminal Procedure covers the field of prior sex-offender-registration offenses used to enhance later sex-offender-registration offenses (including when there are *multiple* prior sex-offender-registration offenses) because "[t]he singular includes the plural and the plural includes the singular." *See*

Appellant's Reply Brief at 2-3 (citing TEX. GOV'T CODE § 311.012(b)).[3] Invoking this principle of code construction, Appellant argues that, when Article 62.102(c) speaks of the use of a previous sex-offender-registration "offense" to enhance a subsequent sex-offender-registration offense, it also intends to include *multiple* previous sex-offender-registration "offense*s*" in its enhancement scheme. (Never mind that it does not contemplate any *greater* enhancement for *multiple* previous sex-offender-registration convictions.) And because Article 62.102(c) thus embraces the use of *multiple* previous sex-offender-registration offenses to enhance a subsequent sex-offender-registration offense, Appellant seems to argue, the general enhancement provisions of Section 12.42 of the Penal Code—including the habitual-offender provision in Section 12.42(d)—simply do not apply.

But there is another code construction principle that seems to us more apt: "If a general provision conflicts with a special . . . provision, the provisions shall be construed, if possible, so that effect is given to both." TEX. GOV'T CODE § 311.026(a). When two statutes are *in pari materia*—as Article 62.102(c) and Section 12.42 plainly are—then "[a]ny conflict between their provisions will be harmonized, if possible, and effect will be given to all the provisions of each act if they can be made to stand together and have concurrent efficacy."

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[3] Appellant's argument seems to be that, because "an offense" should also be read to include plural "offenses," this provision would be used to enhance a subsequent sex-offender-registration offense with more than one prior sex-offender-registration offense—even though the enhancement would be the same (increase by one grade of felony) regardless of whether the enhancement was with one prior sex-offender-registration offense or multiple prior-sex-offender-registration offenses. But then, why would the State ever put itself to the increased burden of proving more than one prior sex-offender-registration offense to enhance under this provision?

Azeez v. State, 248 S.W.3d 182, 192 (Tex. Crim. App. 2008) (quoting *Cheney v. State*, 755 S.W.2d 123, 126 (Tex. Crim. App. 1988)). Rather than to harmonize, Appellant would have us cultivate conflict.

We have never said that the very existence of Article 62.102(c) means that punishment for a sex-offender-registration offense can *never* be enhanced under any other provision. Indeed, we have allowed lower court opinions to stand that have held that: 1) punishment for a sex-offender-registration offense may be enhanced with prior convictions for offenses *other than* sex-offender-registration offenses, under the provisions of Section 12.42 of the Penal Code;[4] and 2) a sex-offense-registration offender can be habitualized under Section 12.42(d), if he has two prior *non*–sex-offender-registration felony convictions.[5] For that matter, we cannot see why a defendant charged with, say, burglary, could not be habitualized under Section 12.42(d) of the Penal Code with two prior sex-offender-registration convictions, without causing any conflict with Article 62.102(c). *Cf. Rawlings*, 602 S.W.2d at 269, 271 (notwithstanding specific provisions in the theft statute regarding how to enhance a theft conviction with a previous theft conviction, Section 12.42 of the Penal Code could still apply to enhance a theft conviction with *other* prior felony convictions).

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[4] *See Barker v. State*, 335 S.W.3d 731, 738 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd) (nothing about Article 62.102(c) prevented the State from enhancing a sex-offender-registration punishment with a prior felony conviction for a non–sex-offender-registration offense).

[5] *See Reyes v. State*, 96 S.W.3d 603, 605-06 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd) (nothing about Article 62.102(c) prevented the State from habitualizing a sex-offender-registration offender under Section 12.42(d)).

But, according to Appellant, a sex-offender-registration offender categorically *cannot* be habitualized under Section 12.42(d) with two or more prior sex-offender-registration convictions. Why? Because Article 62.102(c) governs all enhancements of sex-offender-registration offenses using prior sex-offender-registration offenses, including enhancement with multiple prior sex-offender-registration convictions. Why? Because when Article 62.102(c) says "an offense," this must be read to include "offenses." Why? Because, under Section 311.012(b) of the Code Construction Act, "[t]he singular includes the plural and the plural includes the singular."

We are not persuaded. A simple comparison will illustrate the illogic of Appellant's suggested construction. The Legislature used the same structure in Article 62.102(c) that it chose to use in Sections 12.42(a), (b), and (c)(1) of the Penal Code, the general enhancement provisions applicable whenever a felony offender has one prior felony conviction. For example, Section 12.42(a) says: "[I]f it is shown on the trial of a felony of the third degree that the defendant has previously been convicted of a felony . . . the defendant shall be punished for a felony of the second degree." TEX. PENAL CODE § 12.42(a).[6] This language

[6] Subsections (b) and (c)(1) of Section 12.42 use similar constructs to, respectively, enhance punishment for a second degree felony to a first degree felony with one prior felony conviction, and enhance a first degree felony to a punishment with a mandatory minimum of 15 years. *See* TEX. PENAL CODE § 12.42(b) ("[I]f it is shown on the trial of a felony of the second degree that the defendant has previously been finally convicted of *a felony* . . ., on conviction the defendant shall be punished for a felony of the first degree."); *id.* § (c)(1) ("[I]f it is shown on the trial of a felony of the first degree that the defendant has previously been finally convicted of *a felony* . . ., on conviction the defendant shall be punished by imprisonment . . . for life, or for any term of not more than 99 years or less than 15 years.") (emphases added).

mirrors the language of Article 62.102(c), and it likewise raises the punishment level by one degree when "it is shown" that the felony offender has one prior felony conviction.[7] We have never applied the "singular-plural/plural-singular" maxim to say that Section 12.42(a) also embraces the use of multiple prior-felony offenses to enhance the repeat offender's punishment, but only by one degree. We have not said that the word "felony" in these provisions should be read to include "felonies." Indeed, it would be absurd to construe Section 12.42 in this way, because it would needlessly create an irreconcilable conflict with the later habitual offender provision contained in Subsection (d) of Section 12.42, by which a multiple-prior-felony offender suffers even greater enhanced punishment than the mere repeat offender. And if we would never choose to read Section 12.42(a) in this absurd way, we should not endorse such a construction of Article 62.102(c).

It is preferable to say that Article 62.102(c) simply does not address the multiple-prior-sex-offender-registration-offense scenario.[8] Chapter Sixty-Two of the Code of Criminal

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[7] In *Ford v. State*, 334 S.W.3d 230, 234-35 (Tex. Crim. App. 2011), we made it clear that both Article 62.102(c) and Section 12.42 operate only to increase the level of punishment, not to elevate the grade of the offense of conviction. That being the case, the dissent today is mistaken to believe that Article 62.102(c) can operate to increase the punishment by more than one "degree of felony." Dissenting Opinion at 3-5. Because the first enhancement does not raise the first offense *itself* to a higher grade of felony, every subsequent enhancement would proceed from the identical baseline, raising the punishment to exactly the same "next highest degree of felony" as the first enhancement. The dissenting view is foreclosed by *Ford*.

[8] Thus, the statutory provisions at issue here are unlike those in *State v. Webb*, 12 S.W.3d 808 (Tex. Crim. App. 2000), and *State v. Mancuso*, 919 S.W.2d 86 (Tex. Crim. App. 1996). Each of those cases involved a specific provision for enhancing the punishment of a multiple (not just a repeat) state-jail felon, which specific provision was found to control over the general habitual punishment provision governing ordinary felonies in Section 12.42(d).

Procedure contains no provision for habitualizing a sex-offender-registration offense with multiple prior offenses—of *any* kind, much less prior sex-offender-registration offenses. In the absence of any such special provision in Chapter Sixty-Two, code construction principles dictate that we fall back on the general enhancement provisions in Section 12.42 of the Penal Code. Section 12.42(d) would plainly permit the State to habitualize a sex-offender-registration offense with two prior felony convictions that were *not* sex-offender-registration offenses. We see no reason why it should not also be read to permit the State to habitualize a sex-offender-registration offender with two prior sex-offender-registration convictions. Such a reading harmonizes Article 62.102(c) and Section 12.42 of the Penal Code, and does so in such a way as to maximize the efficacy of both.[9]

For these reasons, we affirm the judgment of the court of appeals.

DELIVERED: February 15, 2017
PUBLISH

[9] It might be argued that to read Article 62.102(c) to apply only to the enhancement of punishment for repeat sex-offender-registration offenders would render it merely redundant of other repeat offender enhancement provisions, such as Section 12.42, subsection (a), (b), or (c)(1), or Section 12.35(c). But that would be inaccurate. Article 62.102(c) permits the enhancement of a repeat sex-offender-registration state-jail felon; Section 12.42 does not speak to the enhancement of state-jail felons at all. To the extent that Section 12.35(c) permits enhancement of state-jail felon to third-degree felony punishment, it does so under different circumstances than does Article 62.102(c).