



# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. PD-0617-20

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THE STATE OF TEXAS

v.

**EDMUND KOKO KAHOOKELE, Appellee**

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**ON APPELLEE'S PETITION FOR DISCRETIONARY REVIEW  
FROM THE THIRD COURT OF APPEALS  
COMAL COUNTY**

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**KEEL, J., delivered the opinion for a unanimous Court.**

## **OPINION**

Appellee successfully moved to quash his two-count indictment on grounds that its enhancement paragraphs were invalid. The State appealed. The court of appeals reversed the trial court's ruling and re-instated the indictment. *State v. Kahookele*, 604 S.W.3d 200, 213 (Tex. App.—Austin 2020). We granted Appellee's petition for discretionary review to decide whether an aggravated state-jail felony may be enhanced

under the habitual offender statute, § 12.42(d). *See* Tex. Penal Code § 12.42(d). We answer that question “yes” and affirm the judgment of the court of appeals.

## **I. The Indictment and Motion to Quash**

The State charged Appellee with two counts of state-jail felony possession of penalty group one controlled substances, cocaine and methamphetamine, alleged to have occurred on or about December 28, 2016. Tex. Health & Safety Code §§ 481.102(3)(D), (6). These counts were enhanced with an allegation of a prior murder conviction that would make them punishable as third-degree felonies. *See* Tex. Penal Code § 12.35(c). They were further enhanced with allegations of sequential, non-state-jail felony convictions for forgery and engaging in organized criminal activity, potentially exposing Appellee to a habitual-offender range of punishment of 25 to 99 years or life. *See* Tex. Penal Code § 12.42(d). Appellee’s motion to quash argued that the enhancement paragraphs were invalid, and the trial court granted the motion. Only the habitual-offender allegations are at issue here.

## **II. Relevant Punishment Statutes**

The outcome of this case is governed by the meaning and interplay of three statutes: §§ 12.35, 12.42, and 12.425 of the Penal Code. *See* Tex. Penal Code §§ 12.35, 12.42, 12.425.\*

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\* *Nota bene*: Section 12.35(c) was amended effective January 1, 2017, to conform its references to Code of Criminal Procedure Article 42.12 § 3(g) to that statute’s re-codified and re-numbered version. *See* Act of Jan. 1, 2017, 84th Leg., R.S., ch. 770 (H.B. 2299), § 2.81, 2015 Tex. Gen. Laws 2321, 2393 (codified at Tex. Penal Code § 12.35(c)). This opinion refers to the version of § 12.35(c) in effect in December 2016, when Appellee’s indictment alleges he committed his crimes. *See* Act of Sept. 1, 2011, 82nd Leg., R.S., ch. 122 (H.B. 3000), § 13, 2011 Tex.

An ordinary SJF is punishable by “confinement in a state jail for any term of not more than two years or less than 180 days.” Tex. Penal Code § 12.35(a). It may be enhanced to an aggravated SJF and punished as a third-degree felony if, as alleged here, the defendant has a previous felony conviction enumerated in certain statutes:

(c) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense that:

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. .  
.

(2) the individual has previously been finally convicted of any felony:

(A) under Section 20A.03 or 21.02 or listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure[.]

*Id.* at § 12.35(c)(2)(A).

Ordinary SJFs can be enhanced under § 12.425 in two different ways. *See id.* at § 12.425(a) and (b).

Subsection (a) enhances the punishment for an ordinary SJF to a third-degree range if the offender has two previous, ordinary SJF convictions:

(a) If it is shown on the trial of a state jail felony punishable under section 12.35(a) that the defendant has previously been finally convicted of two state jail felonies punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the third degree.

*Id.* at § 12.425(a).

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Gen. Laws 613, 618. This opinion also abbreviates “state jail felony” as “SJF” and “state jail felonies” as “SJFs”; and its references to “ordinary SJFs” are those punishable under § 12.35(a) and to “aggravated SJFs” are those punishable under § 12.35(c). *See* Tex. Penal Code §§ 12.35(a), (c); *State v. Webb*, 12 S.W.3d 808, 811 (Tex. Crim. App. 2000) (discussing “aggravated” state-jail felonies enhanced under Section 12.35(c)).

Subsection (b) enhances the punishment range for an ordinary SJF to a second-degree range if the offender has two prior, sequential felony convictions other than ordinary SJFs:

(b) If it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felonies other than a state jail felony punishable under Section 12.35(a), 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 for a felony of the second degree.

*Id.* at § 12.425(b).

An aggravated SJF can be enhanced under § 12.425(c) to a second-degree range if the defendant has a previous conviction for a felony other than an ordinary SJF:

If it is shown on the trial of a state jail felony for which punishment may be enhanced under Section 12.35(c) that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the second degree.

*Id.* at §12.425(c).

The question here is whether an aggravated SJF can also be enhanced under § 12.42(d).

Section 12.42(d) says that an offender convicted of a felony other than an ordinary SJF who has two previous, sequential convictions for felonies other than ordinary SJFs is subject to a punishment range of 25 to 99 years or life in prison:

(d) Except as provided by Subsection (c)(2) or (c)(4), if 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 of

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. A previous conviction for a state jail felony punishable under Section 12.35(a) may not be used for enhancement purposes under this subsection.

*Id.* at § 12.42(d).

Appellee argues that § 12.42(d) does not apply to aggravated SJFs and that § 12.425 exclusively applies to them. The Court of Appeals disagreed.

### **III. Court of Appeals**

The court of appeals' majority rejected Appellee's argument that § 12.425 enhances aggravated SJFs to the exclusion of § 12.42(d). *Kahookele*, 604 S.W.3d at 210. It held that, if an offender convicted of an aggravated SJF has two previous, sequential, non-SJF convictions, his punishment may be enhanced under § 12.42(d). *Id.* Because Appellee was charged with aggravated SJFs, and his indictment alleged two previous, sequential non-SJF convictions, his potential punishment could be enhanced under § 12.42(d) to the habitual offender range of 25 to 99 years or life. *Id.* at 211-12. The court of appeals reversed the trial court's order granting Appellee's motion to quash and remanded the case to the trial court for further proceedings. *Id.* at 213.

The dissenting opinion said the Legislature removed from § 12.42 the provisions related to SJFs and enacted § 12.425 to control SJF enhancements. *Id.* at 213 (Kelly, J., dissenting). According to the dissent, the surrounding statutory context confirms that SJFs, including aggravated SJFs, should be enhanced under § 12.425. *Id.* The dissent

said this position was bolstered by the Legislature’s change to the title of § 12.42, adding “Penalties for Repeat and Habitual Felony Offenders on Trial for First, Second, or Third Degree Felony,” and the title of the new § 12.425, “Penalties for Repeat and Habitual Felony Offenders on Trial for State Jail Felony.” *Id.* (emphasis omitted). The dissent asked why the Legislature would create the new § 12.425 for SJF enhancements and transfer the enhancements for repeat and habitual state jail offenders, including those with aggravated SJFs, to the new statute but silently retain an enhancement for aggravated SJFs under § 12.42(d). *Id.* The dissent disagreed with the majority’s reliance on an unpublished case and cases predating the Legislature’s changes to § 12.42 and creation of § 12.425. *Id.* at 214.

#### **IV. Statutory Interpretation**

Statutory interpretation is a question of law, which we review de novo. *Tapps v. State*, 294 S.W.3d 175, 177 (Tex. Crim. App. 2009).

When we interpret statutes, we focus on the literal text and attempt to discern its fair, objective meaning. *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). We give effect to the plain meaning of the statutory text, reading it in context and construing it according to the rules of grammar and common usage. *Id.*; *Tapps*, 294 S.W.3d at 177. We assume that every word has been used for a purpose, and we give effect to each word, phrase, clause, and sentence if reasonably possible. *Tapps*, 294 S.W.3d at 177. Generally, a statute’s “expression of one thing implies the exclusion of

other, unexpressed things.” *Chambers v. State*, 580 S.W.3d 149, 156 (Tex. Crim. App. 2019).

We look not only at the statute but also other provisions within the whole statutory scheme. *Id.* at 37. When two statutes are *in pari materia*—that is, dealing with the same general subject or having the same general purpose—we try to harmonize any conflict between them, giving effect to each statute and allowing them to stand together. *Azeez v. State*, 248 S.W.3d 182, 191-92 (Tex. Crim. App. 2008). If a general provision conflicts with a special provision, we construe the provisions so that effect is given to both if possible. Tex. Gov’t Code § 311.026(a). Titles or section headings do not limit or expand the meaning of a statute. *Id.* at § 311.024. They are of use only when they shed light on an ambiguous word or phrase. *Bhd. Of R.R. Trainmen v. Balt. & Ohio R.R.*, 331 U.S. 519, 528-529 (1947).

A statute is unambiguous when it reasonably permits only one understanding. *State v. Schunior*, 506 S.W.3d 29, 35 (Tex. Crim. App. 2016). We will not add to or subtract from such a statute. *Boykin*, 818 S.W.2d at 785. But if the language is ambiguous or the plain language would lead to absurd consequences that the Legislature could not possibly have intended, out of necessity we may consider extratextual factors such as legislative history. *Id.* at 785-86.

## **V. Analysis**

Sections 12.425(c) and 12.42(d) are *in pari materia* because both deal with felony enhancements. But they are neither ambiguous nor in conflict, and their plain language

supports § 12.42(d)’s application to aggravated SJFs. This reading gives effect to all the words and phrases of both statutes, allows them to both stand, and leads to no absurdity.

Section 12.425(c) allows enhancement of an aggravated SJF to a second-degree punishment range if the defendant has a single previous conviction for a felony other than an ordinary SJF. Tex. Penal Code § 12.425(c). Section 12.42(d) allows enhancement of any felony other than an ordinary SJF if the defendant has two previous, sequential convictions for felonies other than ordinary SJFs. *Id.* at § 12.42(d).

Section 12.42(d) only excepts ordinary SJFs from its ambit. If the Legislature had wanted to except all SJFs from § 12.42(d), as Appellee urges, then it would have done so. To read § 12.42(d) as excepting all SJFs would require us to disregard § 12.42(d)’s specific and exclusive exception of ordinary SJFs. But reading § 12.42(d) as written means that an aggravated state jail felon with a greater history of convictions for felonies other than ordinary SJFs may be subjected to a higher range of punishment than an aggravated state jail felon with a lesser history of such convictions. That is a sensible result and not an absurd one, especially when examined in the context of the entire SJF punishment scheme:

<b>Enhancement</b>	<b>Ordinary SJF</b>	<b>Agg. SJF</b>
12.35(a) and (c): No prior felonies	180 days-2 years in state jail	2-10 years in prison
12.425(a): 2 ordinary SJF priors	2-10 years in prison	n/a



12.425(b): 2 sequential, prior felonies other than ordinary SJFs	2-20 years in prison	n/a
12.425(c): 1 prior felony other than an ordinary SJF	n/a	2-20 years in prison
12.42(d): 2 prior felonies other than ordinary SJFs	n/a	25-99 years or life in prison

This reading is supported by the logic we applied in *Crawford v. State* where we concluded that the more specific sex-offender-registration enhancement provision did not preclude enhancement under § 12.42(d). 509 S.W.3d 359, 364 (Tex. Crim. App. 2017). Section 12.42(d) could be used to enhance a sex-offender-registration offense when the offender had more than one prior felony conviction because the sex-offender-registration enhancement provision did not address the multiple-prior-convictions scenario. *Id.* Similarly, § 12.425(c) does not address enhancement of aggravated SJFs with multiple prior felony convictions, so the general habitual offender statute may apply in such situations.

The dissenting opinion in the court of appeals pointed to *Crawford*'s statement that "Section 12.42 does not speak to the enhancement of state-jail felons at all." *Kahookele*, 604 S.W.3d at 213-14 (Kelly, J., dissenting) (citing *Crawford*, 509 S.W.3d at 364 n.9). *Crawford* made that statement in a footnote rebutting a hypothetical argument about the potential for redundancy of the sex-offender-repeat-offender enhancement statute. *Crawford*, 509 S.W.3d at 364 n.9. Under those circumstances it is not binding

authority. *Baumgart v. State*, 512 S.W.3d 335, 342 (Tex. Crim. App. 2017) (recognizing that a statement unnecessary to the resolution of a case is not binding authority).

Regardless of whether it lacks precedential value, *Crawford*'s statement was too broad. Section 12.42(d) does not speak to the enhancement of ordinary SJFs; but their express exclusion indicates the inclusion of aggravated SJFs. *See Schunior*, 506 S.W.3d at 38 (stating that a statute's express mention or enumeration of one class is tantamount to an exclusion of all others). So § 12.42(d) by implication speaks to the enhancement of SJFs, but only aggravated ones.

Appellee urges us to find the statutes ambiguous because of the split of opinion in the court of appeals. He argues, "One need only look to the majority and dissenting opinions of the Court of Appeals in this case to see that there are at least two different, reasonable interpretations of the interplay of the statutes at issue." But the dissenting opinion below did not find the language of the statutes to be ambiguous. It looked to statutory context and headings before considering whether the statutory language was ambiguous. *Kahookele*, 604 S.W.3d at 213 (Kelly, J., dissenting). Headings and titles are relevant only in the face of an ambiguous statute, and the statutory context here supports the clear statutory language. Consequently, the competing opinions below do not support a finding of ambiguity.

## **VI. Conclusion**

Appellee's aggravated SJFs could be further enhanced under § 12.42(d), and the trial court erred in quashing the indictment. The judgment of the court of appeals is affirmed.

Delivered: December 15, 2021

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