

Affirmed and Opinion Filed November 15, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-01269-CR

**JOE L. GARRISON, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 203rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1476338-P**

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Stoddart
Opinion by Justice Stoddart

A jury convicted Joe L. Garrison of aggravated sexual assault. Garrison pleaded true to two enhancement allegations of prior felony convictions. The jury assessed punishment at 99 years in prison and a \$10,000.00 fine. In a single issue, Garrison argues the punishment charge failed to instruct the jury that the State was required to prove the two prior felony convictions were sequential. We conclude Garrison's plea of true relieved the State of its burden to prove the enhancement allegations and that the record does not affirmatively reflect the enhancement was improper. Therefore, the punishment charge correctly instructed the jury to find the enhancement allegations true. We affirm the trial court's judgment.

The indictment alleged for purposes of enhancement that before the commission of the current offense, Garrison was finally convicted of robbery on October 1, 1984. The State later

gave written notice of an additional enhancement allegation that Garrison was finally convicted of robbery on February 16, 1990.

At the punishment phase of trial, Garrison stipulated that he was the person named in the prior convictions. He pleaded true to the enhancement allegations outside the presence of the jury and the trial judge admonished him about the consequences of his plea. Before the jury, the State offered, and the trial court admitted, the stipulation and the pen packets for the prior convictions into evidence. The prosecutor read the enhancement allegations to the jury, following which Garrison's attorney entered a plea of true to both allegations. The punishment charge recited the enhancement allegations as follows:

Paragraph Two of the indictment alleges that prior to the commission of the aforesaid offense by the said Joe Garrison, to-wit: on the 1st day of October, A.D., 1984 in the Criminal District Court No. 4 of Dallas County, Texas, in Cause No. F84-73996 on the docket of said Court, the said Joe Garrison under the name of Joe Garrison, was duly and legally convicted in said last named Court of a felony, to-wit: Robbery.

Paragraph Three of the indictment alleges that prior to the commission of the aforesaid offense by the said Joe Garrison, to-wit: on the 16th day of February, A.D., 1990 in the Criminal District Court No.4 of Dallas County, Texas, in Cause No. F89-85735 on the docket of said Court, the said Joe Garrison under the name of Joe Garrison, was duly and legally convicted in said last named Court of a felony, to-wit: Robbery.

The trial court instructed in the punishment charge that Garrison pleaded true to the enhancement allegations and the trial court accepted the plea after admonishing Garrison about the consequences of his plea. The trial court instructed the jury to find the allegations set out in the enhancement paragraphs are true and to assess punishment in the range of 25 years to 99 years or life and a fine not to exceed \$10,000.00.

Texas Penal Code section 12.42(d) governs punishment enhancement for habitual felony offenders. TEX. PENAL CODE ANN. § 12.42(d). Under section 12.42(d), the chronological sequence of events must be proved as follows: (1) the first conviction becomes final; (2) the

offense leading to a later conviction is committed; (3) the later conviction becomes final; and (4) the offense for which the defendant presently stands accused is committed. *Jordan v. State*, 256 S.W.3d 286, 290–91 (Tex. Crim. App. 2008). The State has the burden of proving the sequential felony convictions. *Id.*

Here, Garrison pleaded true to the enhancement allegations as contained in the indictment and the State’s notice of enhancement. A plea of true to enhancement paragraphs relieves the State of its burden of proving the prior convictions alleged for enhancement and forfeits a defendant’s right to challenge the sufficiency of the evidence supporting the convictions, unless the record affirmatively reflects that the enhancements were improper. *See Hopkins v. State*, 487 S.W.3d 583, 586 (Tex. Crim. App. 2016); *Roberson v. State*, 420 S.W.3d 832, 838 (Tex. Crim. App. 2013).

After pleading true to the enhancement allegations, Garrison must show the record affirmatively reflects that the enhancements were improper. *See Hopkins*, 487 S.W.3d at 587. However, he does not point to any evidence in the record affirmatively showing the enhancements were improper. Indeed, as in *Hopkins* and *Roberson*, the record supports the enhancement allegations. *See Hopkins*, 487 S.W.3d at 587; *Roberson*, 420 S.W.3d at 840. The pen packets show the 1984 robbery conviction was final on October 1, 1984. The judgment and indictment for the 1990 robbery conviction show the offense was committed on or about August 6, 1989. The judgment for the 1990 robbery conviction shows it was final on February 16, 1990.¹ The current offense was committed on or about September 20, 2014.

Because Garrison pleaded true to the enhancement allegations and the record does not

¹ The record does not indicate either prior conviction was appealed, therefore, it is presumed both convictions were final when sentence was imposed. *See Fletcher v. State*, 214 S.W.3d 5, 8 (Tex. Crim. App. 2007); *Davy v. State*, 525 S.W.3d 745, 752 (Tex. App.—Amarillo 2017, pet. ref’d) (absent notice of appeal, conviction is final on date sentence is imposed).

affirmatively show the enhancements were improper, the trial court correctly instructed the jury to find the enhancement paragraphs were true. Accordingly, there was no error in the jury charge. We overrule Garrison's sole issue and affirm the trial court's judgment.

/Craig Stoddart/

CRAIG STODDART
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

JOE L. GARRISON, Appellant

No. 05-16-01269-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 203rd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F-1476338-P.
Opinion delivered by Justice Stoddart.
Justices Lang-Miers and Fillmore
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 15th day of November, 2017.