

Affirmed as Modified and Opinion Filed July 12, 2022



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

No. 05-20-01119-CR

No. 05-20-01120-CR

No. 05-20-01121-CR

No. 05-20-01122-CR

No. 05-20-01123-CR

No. 05-20-01124-CR

No. 05-20-01125-CR

ANDREW COLE HAMILTON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 296th Judicial District Court
Collin County, Texas**

**Trial Court Cause Nos. 296-81112-2020, 296-81113-2020, 296-81114-2020,
296-81659-2020, 296-81978-2020, 296-82339-2020, & 296-82340-2020**

MEMORANDUM OPINION

Before Justices Myers, Carlyle, and Goldstein
Opinion by Justice Myers

Appellant Andrew Cole Hamilton pleaded guilty to six state-jail felony offenses: possession of a controlled substance in an amount of less than one gram (causes 01119-CR, 01120-CR, 01121-CR, 01122-CR, and 01124-CR) and fraudulent use/possession of less than five items of identifying information of an

individual (cause 01123-CR). He also pleaded guilty to one second-degree felony offense: possession with intent to deliver a controlled substance in an amount of one gram or more but less than four grams (cause 01125-CR). After hearing evidence, the trial court sentenced appellant to two years in state jail on each of the six state-jail felonies and deferred adjudication of guilt on the second-degree felony offense, placing appellant on deferred adjudication probation for ten years. The trial court stated that the sentences for the six state-jail felonies would run concurrently but ordered that the sentence for the second-degree felony would run consecutively to the state-jail felony sentences. Appellant raises two issues on appeal, arguing the trial court erred in stacking his term of deferred adjudication probation and that the cumulation orders in the judgments lacked specificity. As modified, we affirm.

DISCUSSION

In his first issue, appellant argues the trial court erred in stacking appellant's term of deferred adjudication in 01125-CR onto the six state-jail felony sentences. In his second issue, he contends the cumulation orders in the judgments were not specific enough to inform appellant or TDCJ of the manner in which appellant's sentences should be stacked.

We review a trial court's decision to cumulate sentences for an abuse of discretion. *Hurley v. State*, 130 S.W.3d 501, 503 (Tex. App.—Dallas 2004, no pet.); *Ross v. State*, No. 05-14-00014-CR, 2014 WL 7399314, at *1 (Tex. App.—Dallas Dec. 17, 2014, pet. ref'd) (mem. op., not designated for publication).

Cumulative sentencing is permitted only as provided by statute. *Hurley*, 130 S.W.3d at 503; *Ross*, 2014 WL 7399314, at *1. Article 42.08 of the code of criminal procedure provides that when a defendant has been convicted in two or more cases, the trial court has discretion to order the judgment and sentence imposed in the second conviction either (1) to begin to run after the judgment and sentence imposed in the preceding conviction has ceased to operate, or (2) to run concurrently with the judgment and sentence imposed in the preceding conviction. *Hurley*, 130 S.W.3d at 503; *Ross*, 2014 WL 7399314, at *1; see TEX. CODE CRIM. PROC. art. 42.08(a). In *Hurley*, we held that because it does not include an adjudication of guilt, a deferred adjudication order is not a conviction for purposes of article 42.08. *Hurley*, 130 S.W.3d at 505; see *Beedy v. State*, 194 S.W.3d 595, 602 (Tex. App.—Houston [1st Dist.] 2006), *aff'd*, 250 S.W.3d 107, 113 (Tex. Crim. App. 2008). The trial court does not have discretion to stack two sentences until a defendant has been convicted of two or more offenses and sentences are imposed or suspended in those cases. *Hurley*, 130 S.W.3d at 506; *Ross*, 2014 WL 7399314, at *1.

The trial court in this case deferred a finding of guilt in the second-degree felony case, 01125-CR, placing appellant on community supervision for ten years. The court orally (and erroneously) ordered the sentence in the second-degree felony case to run consecutively to the six state-jail felony sentences. A deferred adjudication probation may not be cumulated onto sentences for a conviction. *E.g.*, *Hurley*, 130 S.W.3d at 507. The appropriate remedy for an unauthorized order

cumulating sentences is to reform the judgment and delete the cumulation order. *See Beedy*, 250 S.W.3d at 113 (court of appeals properly deleted unauthorized order cumulating a deferred sentence on a sentence of conviction); *see also Kelley v. State*, No. 07-16-00396 & 00397-CR, 2017 WL 6614586, at *4 (Tex. App.—Amarillo Dec. 21, 2017, pet. ref'd) (mem. op., not designated for publication); *Miranda v. State*, No. 03-13-00103-CR, 00182, 00183, 00184, 00185-CR, 2014 WL 2957794, at *2 (Tex. App.—Austin June 24, 2014, no pet.) (mem. op., not designated for publication); *Henderson v. State*, No. 14-11-00727, 00728, & 00729-CR, 2012 WL 6218078, at *8 (Tex. App.—Houston [14th Dist.] Oct. 25, 2012, pet. ref'd) (mem. op., not designated for publication). In this case, however, the order of deferred adjudication in 01125-CR does not contain any language ordering it be cumulated onto appellant's state jail sentences. Consequently, there is no error for us to reform. *See Henderson*, 2012 WL 6218078, at *8 (deleting erroneous cumulation orders in two of three judgments on appeal but noting the third judgment contained no cumulation order and could, as a result, be affirmed in full without modification).

Additionally, the trial court ordered the six state-jail sentences to run *concurrently*, and those judgments, therefore, did not necessitate the cumulation language appellant claims is lacking. *See Revels v. State*, 334 S.W.3d 46, 54 (Tex. App.—Dallas 2008, no pet.) (discussing five recommended elements for cumulation orders); *Collier v. State*, No. 05-12-01205 & 01307-CR, 2013 WL 4033638, at *2 (Tex. App.—Dallas Aug. 7, 2013, no pet.) (mem. op., not designated for publication)

(citing *Revels*). Even so, however, the six judgments of conviction in the state-jail felony cases read “THIS SENTENCE SHALL RUN: N/A,” which does not reflect the trial court’s pronouncement that the sentences were to run concurrently.

We have the authority to modify a trial court’s judgments and affirm them as modified. See TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref’d). Accordingly, we modify the judgments in the six state-jail felony cases by changing “THIS SENTENCE SHALL RUN: N/A” to “THIS SENTENCE SHALL RUN: CONCURRENTLY.”

We overrule appellant’s issues and affirm the trial court’s judgments as modified.

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TEX. R. APP. P. 47.2(b)

/Lana Myers//

LANA MYERS

JUSTICE



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

JUDGMENT

ANDREW COLE HAMILTON,
Appellant

No. 05-20-01119-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 296th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 296-81112-
2020.

Opinion delivered by Justice Myers.
Justices Carlyle and Goldstein
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

“THIS SENTENCE SHALL RUN: N/A” is changed to “THIS SENTENCE SHALL RUN: CONCURRENTLY.”

As **REFORMED**, the judgment is **AFFIRMED**. The trial court is directed to prepare a corrected judgment that reflects the modifications made in this Court's opinion and judgment in this case.

Judgment entered this 12th day of July, 2022.



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

JUDGMENT

ANDREW COLE HAMILTON,
Appellant

No. 05-20-01120-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 296th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 296-81113-
2020.

Opinion delivered by Justice Myers.
Justices Carlyle and Goldstein
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

“THIS SENTENCE SHALL RUN: N/A” is changed to “THIS SENTENCE SHALL RUN: CONCURRENTLY.”

As **REFORMED**, the judgment is **AFFIRMED**. The trial court is directed to prepare a corrected judgment that reflects the modifications made in this Court's opinion and judgment in this case.

Judgment entered this 12th day of July, 2022.



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

JUDGMENT

ANDREW COLE HAMILTON,
Appellant

No. 05-20-01121-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 296th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 296-81114-
2020.

Opinion delivered by Justice Myers.
Justices Carlyle and Goldstein
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

“THIS SENTENCE SHALL RUN: N/A” is changed to “THIS SENTENCE SHALL RUN: CONCURRENTLY.”

As **REFORMED**, the judgment is **AFFIRMED**. The trial court is directed to prepare a corrected judgment that reflects the modifications made in this Court's opinion and judgment in this case.

Judgment entered this 12th day of July, 2022.



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

JUDGMENT

ANDREW COLE HAMILTON,
Appellant

No. 05-20-01122-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 296th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 296-81659-
2020.

Opinion delivered by Justice Myers.
Justices Carlyle and Goldstein
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

“THIS SENTENCE SHALL RUN: N/A” is changed to “THIS SENTENCE SHALL RUN: CONCURRENTLY.”

As **REFORMED**, the judgment is **AFFIRMED**. The trial court is directed to prepare a corrected judgment that reflects the modifications made in this Court's opinion and judgment in this case.

Judgment entered this 12th day of July, 2022.



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

JUDGMENT

ANDREW COLE HAMILTON,
Appellant

No. 05-20-01123-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 296th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 296-81978-
2020.

Opinion delivered by Justice Myers.
Justices Carlyle and Goldstein
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

“THIS SENTENCE SHALL RUN: N/A” is changed to “THIS SENTENCE SHALL RUN: CONCURRENTLY.”

As **REFORMED**, the judgment is **AFFIRMED**. The trial court is directed to prepare a corrected judgment that reflects the modifications made in this Court's opinion and judgment in this case.

Judgment entered this 12th day of July, 2022.



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

JUDGMENT

ANDREW COLE HAMILTON,
Appellant

No. 05-20-01124-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 296th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 296-82339-
2020.

Opinion delivered by Justice Myers.
Justices Carlyle and Goldstein
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

“THIS SENTENCE SHALL RUN: N/A” is changed to “THIS SENTENCE SHALL RUN: CONCURRENTLY.”

As **REFORMED**, the judgment is **AFFIRMED**. The trial court is directed to prepare a corrected judgment that reflects the modifications made in this Court's opinion and judgment in this case.

Judgment entered this 12th day of July, 2022.



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

JUDGMENT

ANDREW COLE HAMILTON,
Appellant

No. 05-20-01125-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 296th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 296-82340-
2020.

Opinion delivered by Justice Myers.
Justices Carlyle and Goldstein
participating.

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

AFFIRMED.

Judgment entered this 12th day of July, 2022.