Affirmed as Reformed and Memorandum Opinion filed February 10, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00489-CR
NO. 14-10-00490-CR
NO. 14-10-00491-CR
NO. 14-10-00492-CR

OSCAR NORMAN GARCIA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 209th District Court
Harris County, Texas
Trial Court Cause Nos. 1197985, 1257869, 1257870, 1257871

MEMORANDUM OPINION

A jury convicted appellant of two cases of aggravated sexual assault of a child and two cases of indecency with a child. The jury assessed punishment at confinement for 10 years (Appeal No. 14-10-00489; Trial Court Cause No. 1197985), 15 years (Appeal No. 14-10-00490; Trial Court Cause No. 1257869); 5 years (Appeal No. 14-10-00491; Trial Court Cause No. 1257870); and 5 years (Appeal No. 14-10-00492; Trial Court Cause No. 1257871), in the Texas Department of Criminal Justice, Institutional Division. The trial

court ordered the sentences to run consecutively. Appellant raises two issues on appeal, both regarding the "stacking" of his sentences.

In his first issue, appellant claims the trial court abused its discretion by permitting the jury to determine whether appellant's sentences would be stacked. The record reflects that during deliberations in the punishment phase, the jury sent the trial court a note inquiring whether the sentences would run sequentially or concurrently. The trial court replied, "It will be the court's decision." The jury returned sentences of 10, 15, 5, and 5 years. Before excusing the jury, the trial court informed them he wanted their input on whether the sentences should be stacked.

The record is unclear as to whether the trial court did consult the jury. When court reconvened, the trial court granted the State's motion to stack the sentences. Appellant concedes no objection was made but asserts that the error cannot be waived because an improper cumulation order is void. The authority relied upon by appellant does stand for the proposition that a defect which renders a sentence void may be raised at any time. *See LaPorte v. State*, 840 S.W.2d 412, 415 (Tex. Crim. App. 1992); *Hendrix v. State*, 150 S.W.3d 839, 852 (Tex. App. – Houston [14th Dist.] 2004, pet. ref'd); *Hurley v. State*, 130 S.W.3d 501, 503 (Tex. App. – Dallas 2004, no pet). However, in those cases the facts showed the proceeding was a single criminal action arising out of the same criminal episode. *See LaPorte* 840 S.W.2d at 415 (Tex. Crim. App. 1992). Under such facts, the trial court may not order consecutive sentences. *Id.*

In appellant's case, the sentences may run consecutively regardless of whether they arise out of the same criminal episode because they involve sex crimes against a child. *See* Tex. Pen. Code § 3.03 (a)(2) (Vernon Supp. 2009); *Hendrix*, 150 S.W.3d at 852; and *Hurley*, 130 S.W.3d at 504, n. 4. Appellant cites no authority, and we are aware of none, that the trial court's decision to seek the jury's input renders the cumulation order void.

To preserve error for appellate review, a party must present a timely request, objection or motion to the trial court, state the specific grounds for the objection, and obtain a ruling. *See* Tex. R. App. P. 33.1(a). *See Martinez v. State,* 22 S.W.3d 504, 507 (Tex. Crim. App. 2000) (stating an objection is required to give the trial court an opportunity to correct the error). Appellant's complaint is waived and his first issue is overruled.

In his second issue, appellant claims the cumulation orders lack the necessary specificity required by law and are therefore void. The following five elements should normally be included in a court's cumulation order: (1) the trial court number of the prior conviction; (2) the correct name of the court where the prior conviction was taken; (3) the date of the prior conviction; (4) the term of years of the prior conviction; and (5) the nature of the prior conviction. *Id.* at 461. This information is supplied to inform the penitentiary authority how long to detain the convict. *Id.* at 462. An insufficient order may be reformed by the appellate court to reflect the sentence actually imposed. *Id.*

In the present case, the trial court's cumulation order includes the correct name of the court where the prior conviction was taken and the date of the prior conviction. The trial court number, term of years, and nature of the prior conviction are of the *current* conviction. Hence each cumulation order references itself rather than the prior conviction. In two cases the nature of the prior conviction is correct in the cumulation order and in one case, the term of years of the prior conviction is correct. We agree the trial court's cumulation orders contain less information than the Court of Criminal Appeals has indicated such orders should contain, and therefore sustain appellant's issue.

We do not agree, however, that the orders are void. Appellant acknowledges that when a cumulation order is not sufficiently clear, an appellate court may reform the order and affirm it as modified if the record contains all necessary information. *See Banks v. State*, 708 S.W.2d 460, 462 (Tex. Crim. App. 1986). *See also Strahan v. State*, 306 S.W.3d 342, 351-54 (Tex. App. – Fort Worth 2010, pet. ref'd).

The record reflects the trial court granted the State's motion to stack the sentences and then pronounced sentence in each case, stating the cause number, the offense, and the term of years for each case.

> In Cause No. 125789 – 7869, the jury has found you guilty of the offense of aggravated sexual assault and assessed your punishment at 15 years' confinement in the Texas Department of Corrections.
>
> In Cause No. 1197985, the jury has found you guilty of the offense of aggravated sexual assault and assessed your punishment at 10 years' confinement in the Texas Department of Corrections.
>
> And in Cause No. 1257871, the jury has found you guilty of the offense of indecency with a child and assessed your punishment at five years' confinement in the Texas Department of Corrections.
>
> Also Cause No. 1257870, the jury has found you guilty of the offense of indecency with a child and also assessed your punishment at five years' confinement in the Texas Department of Corrections.

Subsequently, the trial court stated "you shall be confined for a period of 15, 10, 5 and 5 respectively. . ." Accordingly, the record before us contains sufficient information to allow us to provide the Texas Department of Corrections with the pertinent information regarding appellant's sentences.[1]

We therefore reform the cumulation order portion of the judgment entered in Cause No. 1197985 so that appellant's sentence of confinement for ten years in the Institutional Division of the Texas Department of Criminal Justice, by virtue of his conviction for aggravated sexual assault of a child in Cause No. 1197985, shall begin when the judgment and sentence of confinement for fifteen years in Cause No. 1257869 for aggravated sexual

[1] Under the Rules of Appellate Procedure, Texas courts of appeals have the authority to modify trial-court judgments and affirm them as modified. *See* Tex. R. App. P. 43.2(b). Additionally, the Court of Criminal Appeals previously held that Rule 43's predecessor, article 44.24(b) of the Code of Criminal Procedure,[1] allowed courts to reform cumulation orders if the courts have the necessary data and evidence before them. *Banks*, 708 S.W.2d at 462.

assault of a child, also entered by the 209th District Court of Harris County, Texas, shall have ceased to operate. The trial court imposed sentence in each of these Cause Nos., 1257869 and 1197985, on May 28, 2010.

We reform the cumulation order portion of the judgment entered in Cause No. 1257871 so that appellant's sentence of confinement for five years in the Institutional Division of the Texas Department of Criminal Justice, by virtue of his conviction for indecency with a child in Cause No. 1257871, shall begin when the judgment and sentence of confinement for ten years in Cause No. 1197985 for aggravated sexual assault of a child, also entered by the 209th District Court of Harris County, Texas, shall have ceased to operate. The trial court imposed sentence in each of these Cause Nos., 1257871 and 1197985, on May 28, 2010.

We reform the cumulation order portion of the judgment entered in Cause No. 1257870 so that appellant's sentence of confinement for five years in the Institutional Division of the Texas Department of Criminal Justice, by virtue of his conviction for indecency with a child in Cause No. 1257870, shall begin when the judgment and sentence of confinement for five years in Cause No. 1257871 for indecency with a child, also entered by the 209th District Court of Harris County, Texas, shall have ceased to operate. The trial court imposed sentence in each of these Cause Nos., 1257870 and 1257871, on May 28, 2010.

As reformed, the judgment is affirmed.

PER CURIAM

Panel consists of Justices Brown, Boyce, and Jamison.
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