

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-14-00382-CR**  
**NO. 09-14-00383-CR**  
**NO. 09-14-00384-CR**  
**NO. 09-14-00385-CR**  
**NO. 09-14-00386-CR**  
**NO. 09-14-00387-CR**

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**JOSHUA LUKE MCDONALD, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 128th District Court**  
**Orange County, Texas**  
**Trial Cause Nos. A-140025-R, A-140028-R, A-140031-R, A-140034-R,**  
**A-140037-R, and A-140040-R**

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**MEMORANDUM OPINION**

In a consolidated appeal that involves six separate convictions, Joshua Luke McDonald appeals and complains the trial court's stacking order should be reversed. *See* Tex. Penal Code Ann. § 22.011 (West 2011). McDonald filed a brief that consolidated his challenge to the trial court's stacking order. In a single issue, McDonald contends the trial court erred in stacking the fifteen-year sentence he

received in cause number A-140034-R onto the fifteen-year sentence he received in cause number A-140025-R. We hold the trial court did not abuse its discretion by stacking these sentences, and we affirm the trial court's judgments.

McDonald pleaded guilty to all six of the indictments that resulted in the judgments from which he has appealed; in each of the underlying cases, McDonald elected to allow a jury to assess his punishment. The cases were consolidated so they could be tried before a single jury; at the conclusion of the consolidated trial, the jury assessed fifteen-year sentences in each of the six cases. After the jury returned its punishment verdict, the trial court conducted a sentencing hearing. In the sentencing hearing, the trial court assessed fifteen-year sentences, which it based on the jury's punishment verdicts. Additionally, the trial court ordered that McDonald's sentence in cause number A-140034-R<sup>1</sup> run consecutively to his fifteen-year sentence in cause number A-140025-R. *See* Tex. Code Crim. Proc. Ann. § 42.08 (West Supp. 2015).

McDonald contends that because these cases were all prosecuted in a single criminal action, his sentence in cause number A-140034-R cannot be stacked onto his sentence in cause number A-140025-R. *See generally* Tex. Penal Code Ann. § 3.03(a) (West Supp. 2015). McDonald also argues that because the victim of his

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<sup>1</sup> Appeal Number 09-14-00385-CR is the number assigned by our Court to McDonald's appeal from the judgment rendered in cause number A-140034-R.

offense in cause number A-140034-R asked that his sentence not be stacked, the trial court abused its discretion by refusing her request and stacking his sentences in causes A-140034-R and A-140025-R.

Generally, section 3.03 of the Texas Penal Code requires concurrent sentences if the State prosecutes the defendant for conduct that arises out of the same criminal episode when the defendant is prosecuted in a single criminal action. *Id.* § 3.03(a). However, Penal Code section 3.03(b) includes a number of exceptions to the general rule requiring concurrent sentencing, and the exception pertinent to McDonald's case addresses defendants who are convicted of sexually assaulting victims who were younger than 17 when the assault occurred. *Id.* § 3.03(b) (West Supp. 2015). The individuals identified as the two victims of McDonald's assaults were both younger than 17 when McDonald committed the offenses for which he was found guilty in causes A-140034-R and A-140025-R.

Absent exceptions that do not apply to McDonald's cases, Article 42.08 of the Texas Code of Criminal Procedure provides trial courts with the authority to cumulate sentences when defendants are convicted of two or more crimes. *See Millslagle v. State*, 150 S.W.3d 781, 784 (Tex. App.—Austin 2004, pet. dismiss'd). “The decision whether to cumulate sentences is [] a normative, discretionary function that does not turn on discrete findings of fact.” *Barrow v. State*, 207 S.W.3d 377, 380 (Tex. Crim. App. 2006) (rejecting defendant's Sixth Amendment

claim that he was entitled to have jury determine whether to cumulate sentences). “[W]hen a trial judge lawfully exercises the option to cumulate, that decision is unassailable on appeal.” *Beedy v. State*, 250 S.W.3d 107, 110 (Tex. Crim. App. 2008).

Given that the convictions at issue are both for sexual assaults under section 22.011 of the Penal Code, the trial court was authorized to cumulate McDonald’s sentences even though he was prosecuted in a single criminal action. *See Millslagle*, 150 S.W.3d at 784-85. Because the trial court did not abuse its discretion by stacking McDonald’s sentences in causes A-140034-R and A-140025-R, we overrule McDonald’s sole issue on appeal. *See DeLeon v. State*, 294 S.W.3d 742, 746 (Tex. App.—Amarillo 2009, pet. ref’d) (noting that “for offenses listed in section 3.03(b), the trial court in its discretion may rightly order commencement of the second sentence after completion of the first sentence”). The trial court’s judgments are affirmed.

AFFIRMED.

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HOLLIS HORTON  
Justice

Submitted on August 19, 2015  
Opinion Delivered March 2, 2016  
Do Not Publish  
Before McKeithen, C.J., Kreger and Horton, JJ.