

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

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**NO. 09-15-00200-CR**

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**BRIAN DERRICK, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 88th District Court**  
**Hardin County, Texas**  
**Trial Cause No. 21253**

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**MEMORANDUM OPINION**

Brian Derrick appeals from the trial court's decision to revoke its order placing Derrick on community supervision and proceed with adjudicating his guilt for the aggravated sexual assault of a child.<sup>1</sup> In two issues, Derrick contends that the trial court erred in accepting the plea bargain agreement that resulted in the court placing him on deferred adjudication community supervision, and he claims that his

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<sup>1</sup> This appeal is being taken after the Court of Criminal Appeals granted an out-of-time appeal of the judgment adjudicating guilt.

twenty-year sentence is below the statutory minimum sentence, making it void. We affirm the trial court's judgment.

In issue one, Derrick contends that “[t]he Trial Court erred in accepting a plea pursuant to plea bargain agreement when Appellant was improperly admonished regarding the range of punishment.” “[A] defendant placed on deferred adjudication community supervision may raise issues relating to the original plea proceeding, such as evidentiary sufficiency, only in appeals taken when deferred adjudication community supervision is first imposed.” *Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999); *see also Clark v. State*, 997 S.W.2d 365, 368 (Tex. App.—Dallas 1999, no pet.). Because Derrick's complaints about whether he was improperly admonished were required to be raised in an appeal from the order placing him on deferred adjudication and cannot be raised in this appeal, we overrule issue one. *See id.*

In issue two, Derrick claims that “[t]he Trial Court erred when it assessed a void sentence of 20 (twenty) years which is outside the punishment range for the offense for which Appellant was indicted and pled.” Derrick was indicted for the aggravated sexual assault of a child younger than six years of age. At the time of his plea, he judicially confessed to the indicted offense and all lesser included offenses. The order of deferred adjudication states that the age of the victim was five years. In

a subsequent proceeding, the trial court found the allegations in the State's motion to adjudicate were true, and it then proceeded with an adjudication of guilt, convicted Derrick of aggravated sexual assault of a child, and imposed a twenty-year sentence. The judgment does not include a finding concerning the age of the child.

In the brief he filed in the appeal, Derrick argues his sentence is illegal because the minimum sentence for the aggravated sexual assault of a child under the age of six is twenty-five years. *See* Tex. Penal Code Ann. § 22.021(f) (West Supp. 2016). He argues the appropriate remedy for an illegally lenient sentence based on a plea bargain is a remand with instructions to allow him to withdraw his plea and replead to the indictment. *See Barton v. State*, 962 S.W.2d 132, 139 (Tex. App.—Beaumont 1997, pet. ref'd). However, the crime of sexual assault of a person younger than fourteen “is, in essence, a lesser-included offense of sexual assault of a six-year-old.” *See Puente v. State*, 320 S.W.3d 352, 357 (Tex. Crim. App. 2010). Based on the judgment and the punishment hearing, it appears that the trial court convicted Derrick of the lesser-included offense of aggravated sexual assault, which is punished as a first-degree felony. Tex. Penal Code Ann. § 22.021(e) (West Supp. 2016). Derrick's twenty-year sentence is an authorized punishment for a first-degree felony. Tex. Penal Code Ann. § 12.32 (West 2011). We overrule issue two and affirm the trial court's judgment.

AFFIRMED.

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HOLLIS HORTON  
Justice

Submitted on August 1, 2016  
Opinion Delivered April 19, 2017  
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.