



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

**NO. 02-16-00062-CR
NO. 02-16-00063-CR
NO. 02-16-00065-CR**

DEREK GOALEN

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 16TH DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NOS. F-2014-2181-A, F-2014-2182-A, F-2014-2183-A

MEMORANDUM OPINION¹

A jury found Appellant Derek Goalen guilty of the offenses of aggravated sexual assault, burglary, and injury to a child. In accordance with the punishment assessed by the jury, the trial court sentenced Appellant to fifty years' confinement, twenty years' confinement, and six years' confinement,

¹See Tex. R. App. P. 47.4.

respectively, and ordered the sentences to run concurrently. In a single point, Appellant argues that he was entitled to a mandatory severance under section 3.04 of the Texas Penal Code. See Tex. Penal Code Ann. § 3.04 (West 2011).

Appellant filed motions to sever in each of his cases. On January 25, 2016, at a pretrial hearing, the trial court stated that it was signing three orders granting Appellant's motion for severance in each case. After the trial court signed the orders, however, Appellant's counsel stated that Appellant wanted to withdraw his motions for severance and that the State was in agreement. The trial court then allowed Appellant to withdraw his motions for severance. Appellant's counsel questioned Appellant on the record about his decision to withdraw his motions for severance and confirmed that Appellant wanted to have all three of his cases tried together. When counsel concluded his questioning of Appellant, the trial court questioned Appellant and asked whether Appellant wanted to withdraw his motions for severance. Appellant responded, "Yes, Your Honor."

Because Appellant withdrew his motions requesting severances of his cases and confirmed on the record that he wanted his cases tried together, he cannot complain on appeal of the trial court's failure to grant his motions for severance. See *Ex parte McJunkins*, 954 S.W.2d 39, 40 (Tex. Crim. App. 1997) (recognizing State's option of whether or not to join offenses in single criminal action and defendant's option of whether or not to demand severance); *Milligan v. State*, 764 S.W.2d 802, 803 (Tex. Crim. App. 1989) (recognizing that if

accused waives severance right, or fails to request severance, joinder and prosecution of multiple indictments in consolidated trial is permissible).

We overrule Appellant's sole point and affirm the judgment of the trial court in each of Appellant's cases on appeal.

/s/ Sue Walker
SUE WALKER
JUSTICE

PANEL: WALKER and MEIER, JJ.; and KERRY FITZGERALD (Senior Justice, Retired, Sitting by Assignment).

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: December 8, 2016