



**IN THE
TENTH COURT OF APPEALS**

No. 10-19-00115-CR

DAVID MICHAEL PETERKA,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the County Court at Law
Navarro County, Texas
Trial Court No. C37587**

MEMORANDUM OPINION

David Michael Peterka pled guilty to three counts of sexual assault, a first-degree felony, and after a hearing on punishment, was sentenced to 99 years in prison on each count. *See* TEX. PENAL CODE § 22.011(f). The trial court cumulated the sentences.

In one issue, Peterka contends the trial court's cumulation order was not authorized because, he argues, section 22.011(f) also includes the offense of bigamy, section 25.01 of the Texas Penal Code, and bigamy is not a stackable offense. Section 22.011(f) enhances sexual assault to a first-degree felony "if the victim was a person whom

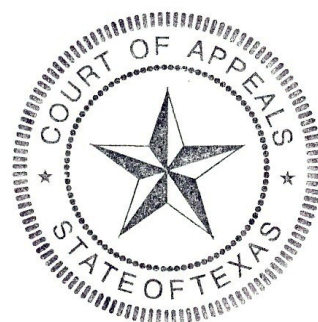
the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01." TEX. PENAL CODE § 22.011(f). Section 25.01 prohibits bigamy. *Id.* § 25.01. Section 3.03 of the Texas Penal Code expressly authorizes the cumulation of sentences if an accused is found guilty of one or more offense under section 22.011. TEX. PENAL CODE § 3.03(b)(2). Peterka was convicted of three offenses under section 22.011. He was not convicted of bigamy. Further, there is no exception in section 3.03 to the authorization of cumulated sentences if an accused is convicted under subsection (f) of section 22.011; and Peterka provides us with no authority to convince us otherwise.¹ Accordingly, the trial court was authorized to cumulate Peterka's sentences.

Peterka's sole issue is overruled, and the trial court's judgments are affirmed.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill

Affirmed
Opinion delivered and filed July 23, 2020
Do not publish
[CRPM]



¹ The Court of Criminal Appeals recently held that the State does not need to prove the actual commission of the offense of bigamy as an element of section 22.011(f). *Lopez v. State, Senn v. State, Rodriguez v. State*, 600 S.W.3d 43, 2020 Tex. Crim. App. LEXIS 362, at *6 (Tex. Crim. App. Apr. 29, 2020).