

**Dismissed and Opinion filed January 18, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-98-01399-CR**  
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**LESTER GARTH BRANCH, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 228<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 726,726**

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**O P I N I O N**

Lester Garth Branch appeals his adjudication of guilt by the trial court after he had been placed on deferred adjudication probation for aggravated sexual assault. The trial court assessed his punishment at 60 years' imprisonment, enhanced by one prior felony conviction. In three points of error, appellant asserts: (1) the trial court abused its discretion by adjudicating appellant's guilt for probation violations; (2) the evidence was insufficient to support the court's findings that appellant violated his probation; and (3) appellant was deprived of due process of law under the state and federal constitutions when the trial court adjudicated appellant guilty for probation violations. We dismiss for lack of jurisdiction.

Appellant pleaded guilty to aggravated sexual assault of a child, and he was initially given deferred adjudication probation for ten years. The State filed its motion to adjudicate for (1) nonpayment of fees, and (2) failure to participate in sex offender counseling. Appellant pleaded “not true” to the State’s motion to adjudicate, and the trial court heard evidence that appellant (1) missed one class at his sex offender class because he had car trouble, (2) that he refused to admit to his sex offense counselor that he was guilty of the underlying sexual offense, and (3) he failed to pay the fees because he had incurred some heavy expenses. After hearing evidence over a period of two days, the trial court found the allegations in the State’s motion true, and assessed appellant’s punishment at 60 years’ imprisonment.

On appeal, appellant contends the evidence was insufficient to prove he violated the conditions of his probation and there was no basis for the trial court to adjudicate his guilt. Accordingly, appellant contends the trial court abused its discretion in adjudicating his guilt, and he has been denied due process under the state and federal constitutions because the trial court did not have a “sound and logical reason” for adjudicating his guilt.

Appellant is attempting to appeal from the trial court’s decision to adjudicate. The State replies that appellant’s points of error are merely allegations of error in the trial court’s decision to adjudicate and therefore the points should be dismissed because a defendant has no right to appeal that type of decision. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (Vernon 1979 & Supp. 2000); *Phynes v. State*, 828 S.W.2d 1, 2 (Tex.Crim.App.1992). In *Phynes*, the court of criminal appeals stated:

Art. 42.12, Sec. 5(b) specifically provides that there shall be no appeal taken from the trial court’s determination to adjudicate. It has long since been recognized that the United States Constitution does not require a state to provide appellate courts or a right to appellate review of criminal convictions. It is clear, therefore, that a state may limit or even deny the right to appeal a criminal conviction. Similarly, as there is nothing in the Texas Constitution which guarantees the right to appeal a criminal conviction, that right is only as provided by the legislature. It naturally follows that when a legislative enactment says an accused may not appeal a determination to adjudicate, there is no right to do so. Therefore, even if appellant’s right to counsel was violated, he may not use direct appeal as the vehicle which [*sic*] to seek redress.

*Phynes*, 828 S.W.2d at 2 (footnotes omitted).

We hold that appellant's points of error present an appeal from the trial court's determination to proceed with an adjudication of guilt and article 42.12, section 5(b) prohibits such an appeal. A trial court's decision to proceed with an adjudication of guilt is one of absolute nonreviewable discretion. *Olowosuko v. State*, 826 S.W.2d 940, 942 (Tex.Crim.App.1992); *Abdallah v. State*, 924 S.W.2d 751, 754-755 (Tex.App.-Fort Worth 1996, pet. ref'd).

Having found that the law requires us to dismiss appellant's points of error, we hold that nothing is presented for appellate review, and the appeal is dismissed.

/s/ Bill Cannon  
Justice

Judgment rendered and Opinion filed January 18, 2001.

Panel consists of Justices Sears, Cannon, and Hutson-Dunn\*

Do Not Publish — TEX. R. APP. P. 47.3(b).

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\* Senior Justices Ross A. Sears, Bill Cannon, and D. Camille Hutson-Dunn, sitting by assignment.