

**Dismissed and Opinion filed October 25, 2001.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-00-00522-CR**

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**SUZIE MCINTYRE, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 263rd District Court  
Harris County, Texas  
Trial Court Cause No. 803,550**

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**OPINION**

Appellant entered a plea of guilty to the offense of possession of cocaine, less than one gram. On May 21, 1999, pursuant to a plea bargain agreement, the trial court deferred a finding of guilt and placed appellant on community supervision for two years. On December 1, 1999, the State filed a motion to adjudicate appellant's guilt, alleging appellant had violated the terms and conditions of her community supervision. Appellant entered a plea of "true" to the state's allegations. The trial court found appellant guilty and assessed punishment at one-year confinement in the State Jail Facility and a \$30.00 fine. On appeal, appellant alleges the trial court abused its discretion in adjudicating her guilty because a fatal

variance existed between the State's motion to adjudicate and the proof offered at the adjudication hearing. We dismiss for want of jurisdiction.

In response to the single issue raised by appellant, the State argues we must dismiss the appeal for want of jurisdiction. We agree. A defendant who has been adjudicated guilty of the original charge following revocation of community supervision may not claim error in the adjudication process. TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5 (Vernon Supp. 2001); *Connolly v. State*, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999). This denial of appellate review from adjudication of guilty proceedings extends to claims raising issues based on constitutional rights. *Phynes v. State*, 828 S.W.2d 1, 2 (Tex. Crim. App. 1992) (holding that defendant could not appeal court's decision to adjudicate guilt even though counsel was not present at adjudication hearing); *Gareau v. State*, 923 S.W.2d 252, 253 (Tex. App.—Fort Worth 1996, no pet.) (holding that court had no jurisdiction to hear appellant's claim of ineffective assistance of counsel relating to events at adjudication hearing).

Appellant contends the trial court erred in adjudicating appellant's guilty because there was a variance between the State's motion to adjudicate guilt and the proof offered by the State at the hearing. Because we have no jurisdiction to consider appellant's contentions of error in the adjudication of guilt process, we are unable to consider this issue. TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5 (Vernon Supp. 2001); *Connolly*, 983 S.W.2d at 741. Accordingly, we dismiss the appeal for want of jurisdiction.

PER CURIAM

Judgment rendered and Opinion filed October 25, 2001.

Panel consists of Justices Yates, Edelman, and Wittig.

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