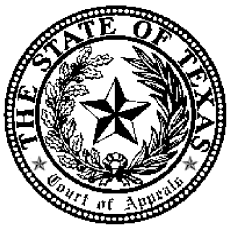
**Affirmed and Opinion filed November 21, 2001.**




**In The**

# Fourteenth Court of Appeals

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**NO. 14-99-00952-CR**
**NO. 14-99-00953-CR**

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**WILLIAM S. WORTHINGTON, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 183rd District Court**
**Harris County, Texas**
**Trial Court Cause Nos. 799,685 & 748,065**

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## O P I N I O N  O N  R E M A N D

Appellant was convicted of murder and sentenced to confinement in the Institutional Division of the Texas Department of Criminal Justice for forty years on July 15, 1999. On July 16, 1999, the trial court found that appellant had violated the conditions of his probation on his conviction for burglary of a habitation and sentenced appellant to confinement for ten years. The court stacked the ten-year sentence onto the forty-year sentence.

In a previous opinion, this court affirmed appellant's murder conviction in cause number 799,685, affirmed his burglary conviction in cause number 748,065, and reformed

the trial court's judgment to order that appellant's sentence in cause number 799,685 (the murder conviction) was to begin after appellant's sentence in cause number 748,065 (the burglary conviction) had ceased to operate. *See Worthington v. State,* 38 S.W.3d 815, 820-21 (Tex. App.—Houston [14th Dist.] 2001). The State filed a petition for discretionary review contending that we erred in holding that the trial court's cumulation order was improper. The Texas Court of Criminal Appeals granted the State's petition, vacated our judgment, and remanded the cause to this court for reconsideration in light of *Pettigrew v. State,* 48 S.W.3d 769 (Tex. Crim. App. 2001), which issued after this court's opinion. *See Worthington v. State,* Nos. 0558-01 and 0559-01, 2001 WL 1043245 (Tex. Crim. App., September 12, 2001) (per curiam).

In our previous opinion, we stated that because appellant's conviction in cause number 799,685 occurred after the conviction in cause number 748,065, it constituted a subsequent conviction for cumulation purposes under article 42.08(a) of the Texas Code of Criminal Procedure.[1] *See Worthington,* 38 S.W.3d at 820. Accordingly, we modified the trial court's cumulation order to require appellant's sentence in cause number 799,685 to begin after appellant's sentence in cause number 748,065 had ceased to operate. *Id.* at 820-21.

In *Pettigrew*, the Court of Criminal Appeals held that a case may be treated as a "conviction" at the time the sentence is suspended or when it is imposed in order to give the trial court flexibility in stacking sentences. 48 S.W.3d at 773. In light of *Pettigrew,* we now conclude the trial court did not abuse its discretion in ordering the ten-year sentence in cause number 748,065 to begin after appellant's forty year sentence in cause number 799,685 ceases to operate.

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[1] The statute states in relevant part:

> [I]n the discretion of the court, the judgment in the second and subsequent convictions may either be that the sentence imposed or suspended shall begin when the judgment and the sentence imposed or suspended in the preceding conviction has ceased to operate, or that the sentence imposed or suspended shall run concurrently with the other case or cases, and sentence and execution shall be accordingly . . . .

TEX. CODE CRIM. PROC. ANN. art. 42.08(a) (Vernon Supp. 2001).

We affirm the judgments of the trial court in all respects.

PER CURIAM

Judgment rendered and Opinion filed November 21, 2001.
Panel consists of Chief Justice Brister, Justices Fowler and Seymore.
Do Not Publish — TEX. R. APP. P. 47.3(b).