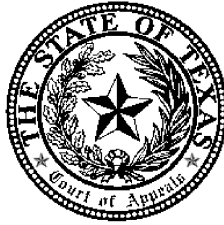


Dismissed and Opinion filed January 31, 2002.



In The
Fourteenth Court of Appeals

NO. 14-01-00473-CR

CESAR STEVEN ALFARO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 726,722**

OPINION

Appellant Cesar Steven Alfaro appeals from an order revoking probation and adjudicating his guilt for the offense of burglary of a habitation with intent to commit assault. *See* Act of May 29, 1993, 73d Leg., R.S., ch. 900, § 1.01, sec. 30.02, 1993 Tex. Gen. Laws 3586, 3633 (amended by Act of May 29, 1995, 74th Leg., R.S., ch. 318, § 8, 1995 Tex. Gen. Laws 2734, 2737) (since amended) (current version at TEX. PEN. CODE ANN. § 30.02 (Vernon Supp. 2002)). We dismiss for want of jurisdiction.

PROCEDURAL BACKGROUND

Appellant was charged with burglary of a habitation with intent to commit assault. He pleaded guilty to the offense, and, on October 22, 1996, the trial court sentenced him to ten-years deferred adjudication and a \$500.00 fine. The period of deferred adjudication community supervision was set to expire October 21, 2006. The trial court placed several conditions on appellant's probation including (1) reporting to his probation officer as instructed, (2) attending violence counseling programs, and (3) completing 360 hours of community service at a rate of ten hours per month. Appellant never reported to his probation officer, did not attend the violence counseling program, and did not perform any community service.

In February, 1997, the State filed a motion to adjudicate appellant's guilt, alleging violation of the three conditions set forth above and various other conditions. Several attempts to contact appellant were unsuccessful, and appellant's revocation hearing was not held until March 8, 2001. At that hearing, the trial court found appellant had violated the three above conditions, adjudicated appellant guilty of burglary, and sentenced him to eight-years confinement and a \$500.00 fine.

DISCUSSION

In a single point of error, appellant contends he received ineffective assistance of counsel because, at the hearing to adjudicate, counsel did not raise the issue of the State's due diligence in apprehending him. Appellant's challenge, therefore, is directed at the decision to adjudicate; it is not directed at error occurring after the adjudication. The legislature, however, has expressly precluded an appeal from the decision to proceed to adjudication. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5(b) (Vernon Supp. 2002).¹

¹ Section 5(b) provides:

On violation of a condition of community supervision imposed under Subsection (a) of this section, the defendant may be arrested and detained as

This preclusion applies even when an appellant challenges the effectiveness of counsel's representation at the hearing to adjudicate guilt. *See, e.g., Perinon v. State*, 54 S.W.3d 848, 849 (Tex. App.—Corpus Christi 2001, no pet.); *Garcia v. State*, 45 S.W.3d 740, 741-42 (Tex. App.—Austin 2001, pet. ref'd); *Cooper v. State*, 2 S.W.3d 500, 503-04 (Tex. App.—Texarkana 1999, pet. ref'd); *Lowe v. State*, 997 S.W.2d 670, 671-72 (Tex. App.—Dallas 1999, no pet.); *Gareau v. State*, 923 S.W.2d 252, 252-53 (Tex. App.—Fort Worth 1996, no pet.); *see also Phynes v. State*, 828 S.W.2d 1, 1-2 (Tex. Crim. App. 1992) (holding defendant could not appeal on ground counsel was not present at adjudication hearing). Under Texas Code of Criminal Procedure article 42.12, section 5(b), this court lacks jurisdiction to address appellant's point of error

We dismiss the appeal for want of jurisdiction.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed January 31, 2002.

Panel consists of Justices Anderson, Hudson, and Frost.

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provided in Section 21 of this article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. *No appeal may be taken from this determination.* After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and defendant's appeal continue as if the adjudication of guilt had not been deferred. A court assessing punishment after an adjudication of guilt of a defendant charged with a state jail felony may suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed, regardless of whether the defendant has previously been convicted of a felony.

TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5(b) (Vernon Supp. 2002) (emphasis added).