

Affirmed and Opinion filed May 4, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00623-CR

MICHAEL JAMES MCALLISTER, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 705,253**

OPINION

Appellant entered a guilty plea to burglary of a habitation. The trial judge deferred a finding of guilt and placed appellant on four years deferred adjudication community supervision. Two years later, the State filed two motions to adjudicate appellant's guilt. The trial judge found the allegations in the motion true, found appellant guilty, and assessed his punishment at thirteen years' confinement. In three issues, appellant argues the trial court abused its discretion in revoking his probation. We affirm.

Section 5(b) of Article 42.12, *Texas Code of Criminal Procedure*, provides no appeal may be taken from the trial court's determination to adjudicate guilt. See TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (Vernon Supp. 1999). An appellant whose deferred adjudication probation has been

revoked and who has been adjudicated guilty of the original charge may not raise contentions of error in the adjudication of guilt process on appeal. *See Connolly v. State*, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999). Thus, the trial judge's decision to proceed with an adjudication of guilt is one of absolute, non-reviewable discretion. *See Burger v. State*, 920 S.W.2d 433, 436-37 (Tex. App.—Houston [1st Dist.] 1996, pet. ref'd). Accordingly, appellant may not seek review by direct appeal. *See Connolly*, 983 S.W.2d at 741; *Phynes v. State*, 828 S.W.2d 1, 2 (Tex. Crim. App. 1992).

We overrule appellant's three issues and affirm the trial court's judgment.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed May 4, 2000.

Panel consists of Justices Cannon, Draughn, and Hutson-Dunn.*

Do Not Publish — TEX.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

* Senior Justices Bill Cannon, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.