

**Affirmed in Part and Reversed and Remanded in Part and Opinion filed August 23, 2001.**



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

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**NO. 14-99-00819-CR**

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**LILLIAN MOORE SMITH, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 180th District Court  
Harris County, Texas  
Trial Court Cause No. 803,139**

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**MEMORANDUM OPINION ON REMAND**

Appellant was convicted by a jury of the third-degree felony of possession of an unlawful telecommunications device. The trial court found the enhancement allegation true and assessed punishment at ten years' confinement. We affirmed the conviction. *Smith v. State*, No. 14-99-00819-CR (Tex. App.—Houston [14<sup>th</sup> Dist.] December 14, 2000) (not designated for publication).

On appeal to this court, appellant complained that the trial court erred in using for enhancement her prior conviction for the state-jail felony of forgery. The trial court relied

on this enhancement to authorize punishment for a second degree felony. Relying on *Campbell v. State*, 2 S.W.3d 729 (Tex. App.—Houston [14th Dist.] 1999), this court affirmed appellant’s conviction and punishment, finding that the term “felonies,” as used in subsection (a)(2) of section 12.42 of the penal code, includes state jail felonies. On Campbell’s petition for discretionary review, subsequent to our opinion in this case, the court of criminal appeals determined that the clear and unambiguous language of subsection 12.42(a) indicates that subsection (a) sets out how the punishment for an offense punishable under section 12.35, entitled “State Jail Felony Punishment,” may be increased. *Campbell v. State*, No. 2031-99, slip op. at 4, 2001 WL 219145, at \*2 (Tex. Crim. App. March 7, 2001). The court held that, as used in subsection 12.42(a), the terms “felony” and “state jail felony” are mutually exclusive; a defendant charged under subsection 12.35(a) who has previously acquired only state-jail felony convictions, whether sequential or non-sequential, must be punished for a third-degree felony under subsection 12.42(a)(1), rather than a second-degree felony under subsection 12.42(a)(2). *Id.* at 7, \*4.

In light of its holding in *Campbell*, the court of criminal appeals remanded this cause to this court for further proceedings consistent with its opinion. Accordingly, we affirm appellant's conviction, but remand for a new punishment hearing.

PER CURIAM

Judgment rendered and Opinion filed August 23, 2001

Panel consists of Yates, Wittig and Frost.

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